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Brief of Wheeler
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Supreme Court of the United States.

OCTOBER TERM, 1899.

The Steamship ADULA, her Engines, &c., THE ATLAS STEAMSHIP COMPANY (Limited),

Claimant-Appellant,

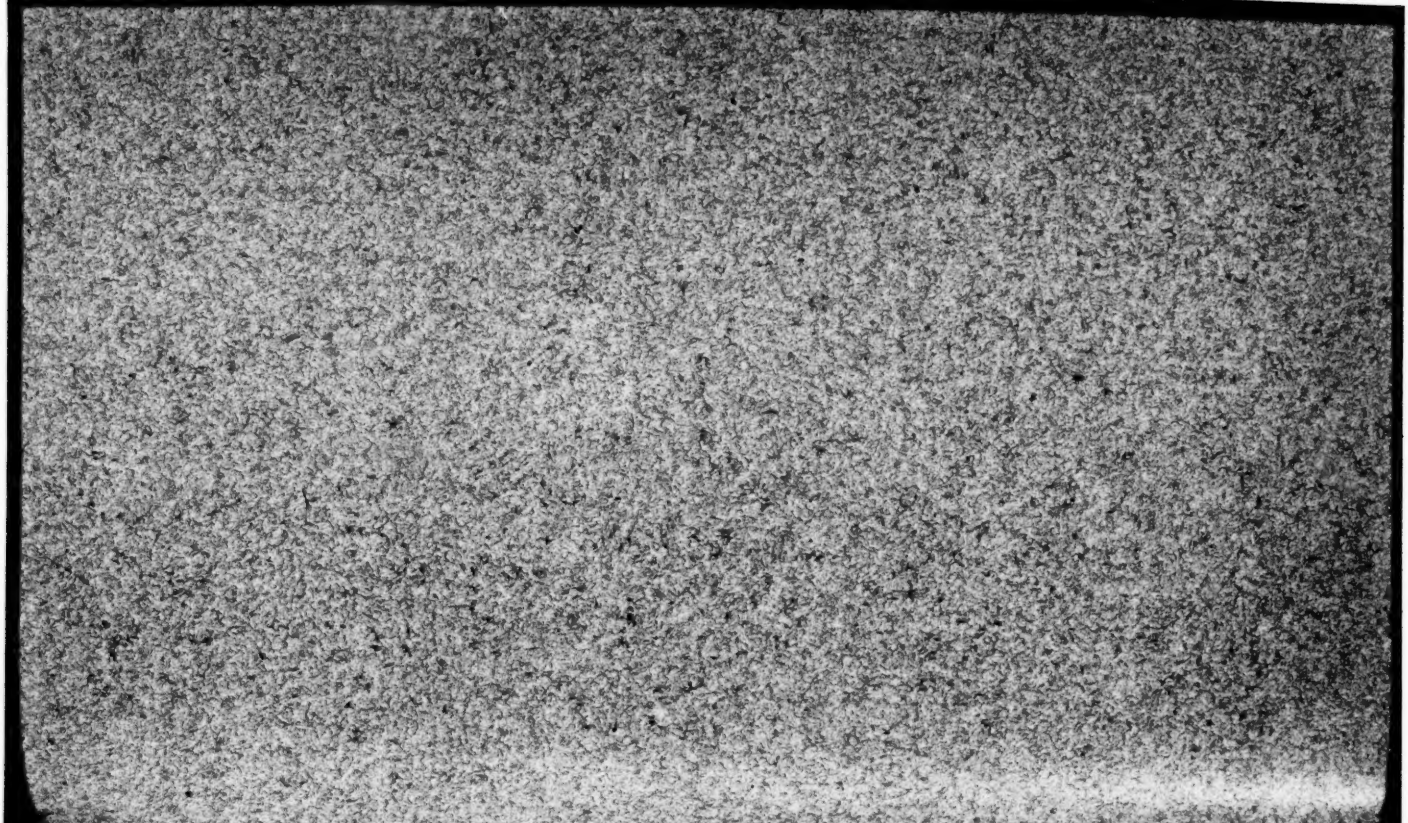
vs.

THE UNITED STATES.

Appeal from the District Court of the United States for the Southern District of Georgia.

BRIEF FOR APPELLANT.

EVERETT P. WHEELER,
Of Counsel.



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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1899.

THE STEAMSHIP "ADULA" HER engines, &c., THE ATLAS STEAMSHIP COMPANY, Limited,
Claimant-Appellant,

against

THE UNITED STATES.

BRIEF FOR APPELLANT.

Statement.

This is an appeal from a decree of the District Court of the United States for the Southern District of Georgia, condemning as prize of war the British Steamship *Adula*, and denying a motion made by the claimant for leave to take further proofs (pp. 238, 243, 244).

The case below is reported, 89 Fed. Rep. 341.

The *Adula* belonged to the Atlas Steamship Company, a British Corporation, and in accordance with the English practice, was registered in the name of Sir William Bowers Forwood its managing Director (pp. 25, 40). The register (No. 36, p. 83) is not printed in the record.

The *Adula* was captured by the United States

steamer *Marblehead* while the former was at anchor off the port of Guantanamo, June 29, 1898. She was taken into Savannah for adjudication. The libel was filed July 21, 1898, and process was returnable August 1, 1898 (p. 4). The case was, however, heard upon the proofs *in preparatorio* before the return of process, the Atlas Steamship Company, the claimant of the ship, having meanwhile filed its answer. Before the decree the claimant made its motion for leave to take further proofs, and the Court granted a rule *nisi* setting the hearing of the motion down for August 9, 1898, giving the claimant leave to serve such affidavits and other papers as it might desire to read upon the motion, and directing that the entry of the decree be without prejudice to said motion. This was July 28, 1898. On the same day the decree of condemnation was rendered (p. 24). The claimant served for use upon the motion to take further proofs the affidavit of Robert Gemmell, the New York resident agent of the claimant (pp. 25 to 29). Annexed to this affidavit was a statement which Gemmell had received from W. P. Forwood, the resident agent of the company in Jamaica (pp. 30-35). There was no time to obtain an affidavit to the facts stated in this statement. In reference to this, Gemmell's affidavit stated that he knew Forwood, was satisfied from personal acquaintance "that his statements were in every particular entirely reliable, and that all the matters stated thereon can be proved by him and by the other witnesses mentioned in said statement" (p. 25). There was also served an affidavit made by W. P. Forwood (pp. 35, 36), and drawn in Jamaica (p. 26). Annexed to the latter affidavit are copies of all the charters that had been made for the *Adula* upon any of her voyages from Jamaica to Cuba (pp. 35 to 39).

The United States filed an answer to the motion

to take further proofs (pp. 40 to 48). This answer is in effect a demurrer, though argumentative. It does not deny that evidence can be given of the facts stated in the moving affidavits, but argues with some elaboration that these facts are irrelevant, or that the evidence ought not to be received.

Upon the motion the United States also offered to read the depositions of Lieutenant Anderson and Ellenberg and Gill, members of the prize crew, taken *de bene esse* (p. 49). To the introduction of these depositions the claimant objected (p. 49).

Upon this motion the Court made an order that "for the purposes of the hearing upon this motion the Court has considered the allegations in said statement of W. P. Forwood, attached to Gemmell's affidavit, as if said Forwood had testified thereto on deposition regularly taken, and giving due weight to the same in connection with the other evidence in the case, and the Court being of the opinion that the evidence as it stands is not susceptible of any satisfactory explanation, and, on comparing the proof proposed to be brought forward with that already in the cause, the Court being of the opinion that the legal effect of the facts before the Court cannot be varied by the circumstances of explanation offered on said motion, the motion was therefore denied" (p. 50).

The Court directed that the papers used on the hearing and the order itself should be filed as part of the record for use in case of an appeal (p. 50). This order was made August 15, 1898. The position of the case is therefore this: The United States opposed the motion of the claimant for further proofs. The counsel for the captors rested their claim upon the legal conclusion alleged to follow from the undisputed facts in the case. It was, in effect, not denied that the circumstances of explanation offered by the claimant in fact existed. The case was presented by counsel and decided by the Court, distinctly on the ground that as matter

of law the captors were entitled to a decree of condemnation upon the undisputed facts. These are as follows:

Solis was a Cuban, born in the neighborhood of Havana. He resided at Manzanillo, and had been French consular agent there. The *Adula* was a British steamship belonging to the Atlas Steamship Company, a British corporation engaged in the business of a common carrier of mails, passengers and freight between New York and various points in the West Indies. The *Adula* ran in connection with the steamers between New York and Kingston, touching at various points on the coast of Jamaica (pp. 132, 139). During the war with Spain she had made four voyages to Cuba (pp. 30–33). Three of these were to Cienfuegos, and one to Santiago. On the first two voyages to Cienfuegos she was chartered with the full consent (and, indeed, on the first voyage, at the instance) of the United States, for bringing off from Cuba, American and British citizens who found themselves there at the outbreak of hostilities. This port was blockaded at the time, and she entered with the full consent of the United States and Spanish authorities. Between the first and second voyages to Cienfuegos she made a voyage to Santiago, which was not at the time blockaded. This was for the purpose of bringing off refugees. She afterwards made a third voyage to Cienfuegos, the blockade of which had been interrupted by reason of the dispatch of the United States vessels there to Santiago, to encounter Admiral Cervera's squadron.* After leaving Cienfuegos, she was, however, warned that it was the intention of the United States Government to continue the blockade of that port, and she did not return to it. On this voyage she did not find as many passengers for Jamaica as was

* Morris, History of War with Spain, p. 188.

expected, and as the people at Cienfuegos were in an absolute state of destitution for want of food, the charterer landed there the provisions which had been shipped for the passengers, and which were not required for that purpose (p. 33).

June 28, 1898, a charter party was executed between W. P. Forwood, the agent of the Atlas Company at Jamaica, and Solis, by which the *Adula* was put at the disposal of the charterer—

"For the conveyance of passengers from Cuban ports hereinafter to be named, to Kingston. The ports that the vessel is to go to are Manzanillo, Santiago and Guantanamo; but it is distinctly understood and agreed by the parties aforesaid that it shall not be deemed a breach of this agreement should the steamer be prevented from entering any of those ports from causes beyond the control of the company, but that should she be able to enter one or all of them, she shall embark the passengers that the charterer shall engage for her and proceed on her voyage. If she is not permitted to enter either Manzanillo, Santiago or Guantanamo, the vessel is to return to Kingston and the voyage shall be considered completed, and the charter money hereinafter referred to, earned without any deductions. * * * The charterer is to provide a good and efficient government pilot to conduct the ship safely into the ports which have been named. Should she be permitted to enter them the charterer guarantees that the proper and efficient clearances shall be obtained for each port, so that the ship shall not be subjected to any fines for breach of regulations. * * *

The company will give the option to the charterer for another voyage similar to this on similar terms, providing the charterer gives the company twenty-four hours' notice after the arrival of the steamer at Kingston" (Exhibit D, pp. 38, 39).

A duplicate, which was taken from the steamer when she was captured, is at pp. 187, 188.

Accompanying this charter were written instructions from Captain W. P. Forwood to Captain

Yeats, the commander of the *Adula*. These were taken from the ship when she was captured (pp. 186, 187). These instructions are so important that we print them in full:

ATLAS STEAMSHIP COMPANY,

JAMAICA AGENCY, KINGSTON, June 28th, 1898.

CAPTAIN YEATES,

S. S. *Adula*,

Dear Sir.—I enclose herein a copy of the agreement under which your vessel is proceeding on, and on board the ship will be the charterer to whom I now introduce you, Mr. Jose R. Solis, and I ask you to show him every attention on the voyage.

You will see by a perusal of the agreement that you are on a voyage wholly and solely for the conveyance of refugees from the ports named to Kingston.

On your arrival at Guantanamo, to which port you will proceed direct, you will find, no doubt, American warships off the port. You will, when signalled to, immediately stop and communicate to the commanding officer the voyage that you are on, and, in fact, you can show him these sailing orders, and I do not think that the commanding officer will make any trouble whatever to your continuing the voyage into the port.

You must be most careful on your arrival there not to interfere or in any way make any observations or sketches of anything that you may see or hear of, but adhere strictly to the duties of your ship.

At Guantanamo it is likely there may be some difficulty in obtaining a pilot, and if the Commanding Officer gives you permission to proceed it is just possible that he may be able to tell you where you can obtain the services of a pilot to go in.

From Guantanamo you will proceed to off Santiago. Here you will meet the other fleet and carry the same instructions out with them as I have mentioned to you in reference to Guantanamo. The charterer is telegraphing at once to Santiago for a pilot to come off to meet the ship, if

permission is granted, to pilot your ship into the port. From Santiago you will proceed to Manzanillo and from thence back to Kingston. The charterer, Mr. Solis, may order you direct from Guantanamo to Kingston, or from Santiago to Kingston, and in such a case you will follow out his orders, which he will give you in writing. He has the option of going to the three ports, but it may be convenient for him to go to only one or even two. The boat's crew that is mentioned in the appendix of this agreement you will provide, but it will be necessary for you to have the ensign in the stern, so as to show your nationality.

You will not allow any provisions of any sort to leave your ship at any of the ports or to do anything that is contrary to the laws of the country, or that could be interpreted as a breach of faith in being allowed to pass the blockade and enter the ports, and I must ask you not to permit any of your crew to land at any of the ports, and only yourself if necessary to visit the British Consul. Wishing you a pleasant voyage,

I remain, dear sirs,
Yours faithfully,
W. Peploe Forwood,
Gen. Agt. Jca.

Please cable your arrival and departure from each port.

W. P. F.

The *Adula* sailed on the 28th of June. Before she sailed Solis asked from the United States Consul at Kingston, Mr. Dent, a permit to enter the ports of Guantanamo, Santiago, and Manzanillo. This Mr. Dent refused to give, on the ground that he had no authority to give it without special instructions from Washington. A similar statement was made by Dent to W. P. Forwood. Much importance was attached by the Court below to the conversations between Dent and Forwood, and between Dent and Solis, and they will be considered in detail under a separate point. At the time the *Adula* sailed, no official blockade of either Guan-

tanamo or Santiago had ever been declared. The proclamations on this subject are contained at pages 211 and 212 of the Record. The first of these is dated April 22, 1898. The only port on the south coast of Cuba declared blockaded is Cienfuegos (p. 211). A second proclamation is dated June 27, 1898, and declares a blockade "of all the ports on the south coast of Cuba from Cape Frances to Cape Cruz." Guantanamo and Santiago are not included within these limits, as will appear from the annexed map. Both of them are east of Cape Cruz.

It is a part of the history of the war that the harbor of Guantanamo had been for some time in the absolute and exclusive possession of the United States naval forces, with entrenchments on the shore which were occupied by marines from the fleet (p. 42, paragraph g; Appendix to brief, pp. 65-67).

It was occupied, in order to provide a convenient coaling and supply harbor and to facilitate communication with the Cubans (*Ibid*, p. 65, 66).

A large United States squadron had been stationed off the entrance to the harbor of Santiago, ready to encounter Admiral Cervera's fleet.

It seems probable that the real reason why the *Adula* was seized is that stated by the Consul to W. P. Forwood (p. 34).

> Forwood said to the Consul: "Oh, Dent, let me show you the Captain's instructions. He has got orders to go to the fleet there and ask their permission to take some refugees." "Well," he said, "I don't know, but they will be watching for her, and I think that Senor Solis is a Spanish agent, carrying $300,000 in gold to buy over the rebels in the American camp." I told him that I had inquired about the man, and that it was one of the usual Kingston yarns."

When the ship was seized careful search was made. The United States authorities took posses-

sion of all her papers. They found a number of letters on board that had been brought by Captain Walker, who had commanded the *Adula* on previous voyages from Cuba to Jamaica, and also some letters that Solis, without the knowledge of the owner of the *Adula*, was taking to Cuba. None of these letters are of an incriminating character, and most of them are not printed in the Record. The substance of them and the facts about them are stated in Gemmel's affidavit, p. 29, paragraphs i, j, and k. At page 213 a stipulation to the following effect is contained in the record:

"It is agreed that the following letters, numbered (here follow the numbers), relate solely to commercial and domestic matters, and that they be abridged as follows, the same being a correct statement of the correspondence found on board the *Adula*, but not copied out in full, and that the same may be used in evidence for either party in lieu of sending up either the originals or copies."

The suspicion that Dent had of Solis was not verified by the investigation. Nothing whatever was discovered on the *Adula* that tended to throw the slightest doubt upon the *bona fides* of his errand, or to suggest that he had any intention of communicating in any way with the Spanish authorities.

Assignment of Errors.

The assignment of errors is at pages 238 to 241 of the Record. The following are the most material, beside the general assignments, usual in admiralty cases:

VI.—For that the Court erred in holding that the ports of Guantanamo and Santiago were blockaded either officially or otherwise, it appearing distinctly that both the said ports were not within the limits of the blockade declared by the proclamation of the President of June 27, 1898, and no

official blockade of said ports had been declared prior to the commencement of the voyage of the *Adula* upon which she was captured.

VII.—For that the Court erred in holding that the port of Guantanamo was blockaded at all, it appearing distinctly that said port was in the possession of the American forces and was not under blockade.

XI.—For that the Court erred in holding that there was any purpose in the mind of Solis, the charterer, or the claimant, to enter a Spanish port whether it was blockaded or not.

XII.—For that the Court erred in holding that the *Adula* sailed with intent to enter a blockaded port or to run the blockade.

XXIII.—For that the Court erred in holding that the additional evidence offered on behalf of the claimant, taken in connection with that already before the Court, would not change the result.

XXV.—For that the Court erred in holding that upon comparing the proofs proposed to be brought forward and with that already in the cause, the legal effect of the facts before the Court could not be varied by the circumstances of explanation offered on the motion to take further proofs.

XXVI.—For that the Court erred in refusing to allow further proofs to be taken in the case.

XXXIII.—For that the Court failed to decide that the voyage of the *Adula* was a friendly voyage, prosecuted solely to mitigate the horrors of war by the removal of non-combatants from the scene of hostilities, for which the consent of both contending parties was sought, and which was under the protection of the laws of war to the same extent as the voyage of a cartel ship.

XXXIV.—For that said Court decided that the said Solis was an enemy of the United States, although after diligent inquiry the naval officers of the United States had found no cause to detain him, and he was allowed by them to depart and was not held as prisoner of war.

XXXV.—For that the Court disregarded the undisputed evidence that there was no intent to run any blockade, and especially the proof that express notice of the voyage and its object and of the charter was given to the United States Consul at Jamaica, that the *Adula* approached the Cuban coast and anchored and whistled for a pilot, and that the naval forces of the United States at Santiago and Guantanamo were so overwhelming that any attempt to run a blockade maintained by them would have been ridiculous.

POINTS.

First.

Guantanamo Bay not blockaded.

1. In point of fact there was not any blockade whatever at Guantanamo Bay. The bay and shores adjacent were in the undisputed possession of the United States forces, and had been for nearly a month. The contention of the captors really is that a veil of absolute seclusion was thrown around the United States vessels there, and that no neutral ship had the right to go and speak to them under pain of capture. Such a proposition has no support in the law of nations. The theory of a blockade, is that the port blockaded is in possession of the enemy, and that vessels are stationed outside to keep neutrals from taking supplies to the enemy.

"The object of blockade is to destroy the commerce of the enemy, and cripple his resources by arresting the import of supplies and the export of products."

The Circassian, 2 Wall., 135, 149.

In the case at bar the bay was held by friends.

No products could be exported. None of the characteristics of a blockade existed. Guantanamo was not in the possession of Spain but of the United States. The United States forces were not stationed *outside* of the port, but occupied it, by land and sea, and the vessels in the harbor were not there to prevent neutrals from supplying the enemy inside the harbor, because there were no enemies there, the United States' lines being complete. Moreover, the *Adula* had no supplies to furnish in any event. She was unarmed: unable to contend with vessels of war, even had she been so minded. No wonder her officers testified that they had no knowledge of any blockade. (Page 91, Interrogatory 21), the purser says: "I did not know that Guantanamo was blockaded." Captain Yeats says the same thing (page 98). Again in answer to the 22d Interrogatory he says: "At the time we went to Guantanamo it was apparently under an order of blockade. No warning or notice had been given to or received by me as to this blockade."

Solis testified to the same effect (pages 108, 109, 113, Interrogatories 21, 22, 41).

The only testimony to the contrary is that of Morris, the colored seaman, who says (page 118, 21st Interrogatory):

"About three days before I left Kingston I heard that Guantanamo was blockaded."

Obviously the man confused the fact of the possession by the United States authorities, and supposed that this was a blockade. An ignorant sailor might very naturally do this. The claimant offered to adduce proof on this point also (p. 28, paragraph *g*).

2. This position is confirmed by the undisputed

facts as to the stopping by the *Vixen*. As the *Adula* was approaching the harbor of Guantanamo, she saw the *Vixen* coming out. The *Vixen* fired a gun, and the *Adula* stopped immediately, was hailed by the *Vixen*, and told to proceed, which she did (Testimony Yeats, p. 98, Int. 22). At page 103 he says:

"I received no warning as to the blockade until we were seized in Guantanamo Bay by Commander McCalla. Nothing was said by the officer on board the *Vixen* except to tell us to proceed. He was just passing out, and did not even stop his engines, and he asked us where we were bound, and we said to Guantanamo, and he said 'proceed.'"

The testimony of Solis is to the same effect (p. 104, Int. 5). So also the testimony of the purser, Williamson (p. 91), of Clarkson, the chief officer (p. 125), and of Hamilton, the quartermaster (pp. 132, 134).

If the order for additional proofs had been granted the United States would have had the right to examine the officers of the *Vixen* on this point, or on any other that might be material. But the motion was opposed, and the claimant's witnesses on this point are uncontradicted.

3. The learned District Judge failed to appreciate the effect of the possession of the port of Guantanamo by the United States military and naval forces. The annexed references to the history of the late war show that this was complete (Appendix to brief, pp. 65-67). Under such circumstances the authorities are clear that there can be no forfeiture of a neutral vessel.

The *Abby*, 5 C. Rob., 251.

The *Trende Sostre*, 6 C. Rob., 390, note.

In *Thirty Hogsheads of Sugar*, 9 Cra., 191, this Court says (p. 195):

"Although acquisitions made during war are not considered as permanent until confirmed by treaty, yet to every commercial and belligerent purpose they are considered as part of the domain of the conqueror, so long as he retains the possession and government of them."

The *Circassian*, 2 Wall, 135, does not support the converse of this proposition.

There New Orleans, which had been actually blockaded, pursuant to proclamation of the President, was taken May 2, 1862. The *Circassian*, bound for that point with intent to run the blockade, was captured on the high seas May 4, 1862.

"The rebel mayor and council were not deposed. There was no armed resistance, but the city was bitterly disaffected and was kept in order only by severe military discipline, and the rebel army was still organized and in the vicinity" (2 Wall, 141).

In the case at bar there was no city. Guantanamo Bay with its shores had been taken by our navy. It was used for a harbor for all naval purposes. There was no embittered populace who might readily communicate with an aggressive foe. On the contrary, throughout the war the Cubans welcomed our troops as deliverers (Appendix, pp. 76, 77 81).

Again, at New Orleans the blockade had been declared by proclamation, and its cessation was declared by proclamation May 12, 1862. This action of the government was held conclusive in the *Circassian* (p. 151). Neither fact exists in the case at bar.

Moreover, the decision in the *Circassian* was not followed by the International tribunal created by the Treaty of Washington. This held the United

States liable for the seizure. In a subsequent case between the same nations this should be controlling.

Lawrence Ed. Wheaton, p. 30.
Lawrence ; Belligerent and Sovereign Rights, p. IV.

4. No official blockade was ever declared of the ports of Santiago and Guantanamo. The proclamation for a blockade which was issued just before June 27th only included that portion of the southern coast of Cuba from Cape Frances to Cape Cruz. An inspection of the map will show that both Santiago and Guantanamo are east of the limits thus declared to be blockaded.

Even the authorities that are most rigorous in regard to the law of blockade concede that where the sovereign power of one belligerent has declared the limits of a blockade, it is not competent for a naval commander to extend those limits.

"Where a blockade has been declared by the Government, the commander of the blockading squadron has no discretionary power to extend its limits. If he prohibits neutral ships from entering ports not embraced in the terms of the blockade he was appointed to enforce, the warning is illegal, and no penalty is incurred by the neutral master by whom it is disregarded."

1 Duer Ins., 647, Sect. 23.

To the same effect is

The *Henrick & Maria*, 1 C. Rob., 146.

It is true that in an emergency, when immediate communication with the home government was impossible, naval officers have sometimes been held warranted in establishing a *de facto* blockade. But in the case at bar, no such justification existed. The facts as to the occupation of Guantanamo Bay were well-known at Washington, ten days before the Proclamation of June 27. If the government

of the United States had intended to prohibit intercourse with that bay it would have been easy to say so in the Proclamation. The omission to include that bay was in effect a license to go there.

5. History fails to show any parallel case where a port has been held to be blockaded. In 1776 the British forces were quartered in Boston, and the British fleet occupied the harbor, but no ships of foreign nations were seized as blockade runners.

In the war between England and France in 1807, after San Domingo revolted against the French Government, and the insurgents obtained control of some of the ports of the islands, the British Government recognized the very point for which we are now contending, that a port could not be declared blockaded when it had ceased to be in the possession of the enemy.

See cases cited under the Second Point, p. 18.

During the late war with Spain, no one pretended that Manila was under blockade after it had been captured by our forces.

It is simply a contradiction in terms to say that the Adula was attempting to run a blockade where, if she had succeeded in getting past the line of the warships, she would only have been in communication with the shore which was absolutely within the lines of our land forces, and was known to be so.

There is a close analogy in the rule of criminal law that a man cannot be held guilty of an attempt to commit a crime where the act, if completed, could not result in the commission of a crime.

In all such cases, even the proved intention will not convict the man, because the act itself, when completed, is not criminal. So also, in the

present case, an act cannot be styled an attempt to run a blockade, when its only possible result would have been communication with territory which was absolutely within the control of the land forces of the United States.

Second.

Relation of people of Cuba to United States.

Another fallacy which underlies the whole opinion of the District Judge is the failure to take any notice of the actual conditions under which the war in Cuba was being waged.

Joint Resolutions No. 21, approved April 20, 1898, are as follows:

Statutes at Large, 1897-'98, p. 738.

"Whereas the abhorrent conditions which have existed for more than three years in the Island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battle ship, with two hundred and sixty-six of its officers and crew, while on a friendly visit in the harbor of Havana, and can not longer be endured, as has been set forth by the President of the United States in his message to Congress of April eleventh, eighteen hundred and ninety-eight, upon which the action of Congress was invited: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

First.—That the people of the Island of Cuba are, and of right ought to be, free and independent.

Second—That it is the duty of the United States

to demand, and the Government of the United States does hereby demand that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

Third.—That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

Fourth.—That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said Island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the Island to its people."

These resolutions draw a broad distinction between the people of Cuba and the Spanish forces in that Island. The authority given to the President is solely for the purpose of compelling the Government of Spain to relinquish its authority in the Island of Cuba.

Following the policy of these resolutions, an Act was approved May 18, 1898, entitled "A Bill to provide assistance to the inhabitants of Cuba, and arms, munitions and military stores to the people of the Island of Cuba" and for other purposes. This Act is as follows:

Statutes at Large, 1897–'98; p. 419.

That while serving in Cuba during the existing war, officers of the army of the United States exercising separate commands, may by special order cause subsistence, medical and quartermasters' supplies to be issued to, and other aid rendered to inhabitants of the island of Cuba who are destitute, and in imminent danger of perishing unless they receive the same.

SEC. 2. That the President and general officers

commanding troops in Cuba, are hereby authorized to furnish to the Cuban people such arms, ammunition, equipment and military stores and supplies as they may require in order to increase their effective fighting force in the existing war against Spain.

The declared policy of the Government on this subject never changed. The treaty of peace which concluded the war, provides that the Island of Cuba is to be independent of Spain, but does not become the property of the United States. The following are the first two articles of this treaty:

ARTICLE I.

Spain relinquishes all claim of sovereignty over and title to Cuba.

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

ARTICLE II.

Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.

The only judicial precedents that have been found which throw light upon this situation, are those which grew out of the revolt of the negroes in San Domingo against the French Government, at the beginning of the present century. The British Admiralty Courts held that when the British Government recognized the possession of the insurgents as hostile to the French, with whom the British were at war, that part of the island occupied by the insurgents could no longer be treated

as hostile to the British, and trade with them became lawful. In

The *Manila*, Edwards Admiralty, 1,

it was held that permission given by the British Government to "any vessels to go to such parts and places in the Island of San Domingo as are not or shall not be under the dominion or in actual possession of His Majesty's enemies," recognized the insurgents to such an extent that neutrals were authorized to trade with the portions of the island occupied by them. In

The *Pelican*, Appendix D, to Edwards' Admiralty, the Court of Appeal says :

"It always belongs to the government of the country to determine in what relations any other country stands towards it. That is a point upon which Courts of Justice cannot decide."

To apply the rule of these cases to the *Adula*, it is plain that the effect of the messages of the President, the joint resolutions, and the Act of Congress before referred to, and the action taken by the authorities of the United States in pursuance thereof, committed this country to the proposition that the people of the Island of Cuba were friends to the United States. It follows of necessity that intercourse with them for the purpose of removing from the actual scene of hostilities such as desired to go, would not be a hostile act to the United States, but on the contrary, a friendly act.

The references to the history of the war, which are submitted herewith (Appendix, pp. 68-83), show distinctly that Gen. Shafter authorized the removal of non-combatants from the city of Santiago ; that their presence in the neighborhood of the United States army was a source of inconvenience and even injury to us, and that the sup-

port of these innocent and unoffending persons was undertaken by our army to its own prejudice. Every non-combatant taken away from the vicinity of Santiago while hostilities were going on there, would be a distinct advantage to the American armies. The *Adula* was only twenty-four hours sail from Jamaica. She could have taken several shiploads of refugees from Santiago before they began to leave the city for El Caney. The action of the *Marblehead* in preventing this was contrary to the declared policy of the Government from the beginning, and was a distinct hindrance to the prosecution of the campaign.

It is, perhaps, not surprising that the learned District Judge should have taken the view of the case he did at the time of the hearing. The war had been pending only about three months. Hostilities were prosecuted vigorously, and it was not unnatural that the learned Judge should have thought it important for the interest of the Government to prevent any possible evasions of the blockade, and to condemn the *Adula* as a warning against intercourse of any sort with any of the Cuban ports. But now that the war is over, and the matter reviewed calmly and deliberately, it would seem clear that the condemnation was unwarranted, either by the law or the facts.

Third.

Cartel Ships and Errands of Necessity and Humanity.

The authorities on the subject of cartel ships are in strict analogy to the present. These hold that the more humane principles applicable to the

treatment of prisoners, which have gradually become part of the laws of war, entitle to immunity from capture, cartel ships, intended *bona fide* to carry prisoners for exchange.

The leading case (with historical notes) is

The *Daifje*, 3 C. Rob., 140.

In line with this is

The *Rose in Bloom*, 1 Dodson, 57.

An American ship was captured on a voyage from Bayonne, a blockaded port, having passengers on board, with stores for their use. There were also puncheons of brandy, laces and so forth. The defense put forward was that the vessel was employed by the American Chargé d' Affaires to convey distressed American seamen home from the blockaded port. Though this seems to have been true, there were other circumstances to show that this was not the sole purpose of her voyage, and consequently she was condemned with her cargo (excepting the stores for the legitimate use of the passengers). The following words occur in Sir W. Scott's judgment :

"It is well known that many American seamen have been thrown out of employment and detained in the ports of France by the violence of the ruling power in that country ; if this ship had been employed by the American Chargé d'Affaires for the sole purpose of taking home these poor men, it would, I think, have been entitled to very favorable consideration."

Can there be any question that the removal of refugees was as much in the interest of humanity as the removal of American sailors, or the exchange of prisoners ?

In analogy to these cases is the established exception that it is no breach of blockade to enter a

blockaded port, in case of necessity, either for supplies, stores, or repairs.

The *Forest King*, Blatchf. Prize Ca., 1, 45, 48.
Affirmed in Circuit Court, *Ibid.*, 49.
The *Argonaut*, *Ibid.*, 62.

Fourth.

Implied License.

Another well-recognized exception to the law of blockade is that of implied license. Where a blockade has not been enforced rigorously, but some vessels from time to time have been allowed to enter the blockaded port, this amounts to an implied license to others to enter. Duer, who is the most strict of American writers in enforcing the rigor of the old law of blockade, admits the validity of this exception.

In

Sect. 30, 1 Duer Ins., 654,

the rule is thus stated :

"The application of the force to the purposes intended should be constant and uniform. * * * Where some are suffered to pass, others will have a right to infer that the blockade is raised." * * * "There must be repeated instances of an improper relaxation."

To the same effect is

The *Rolla*, 6 C. Rob., 364, 372.

In the *Juffrow Maria Schroeder*, 3 C. Rob , 147, the Court says (p. 158) :

"It is in vain for governments to impose block-

ades if those employed on that service will not enforce them; the inconvenience is very great, and spreads far beyond the individual case; reports are eagerly circulated that the blockade is raised; foreigners take advantage of the information; the property of innocent persons is ensnared, and the honor of our own country is involved in the mistake."

In the present case the *Adula* had been allowed repeatedly to go to Cuba and take refugees away. Certainly her owner had every reason to suppose that the consent of the naval authorities would again be given. No notice had been given that the policy of the Government in this respect had changed. On the contrary there was every reason to believe that a bombardment of Santiago would soon begin, that non-combatants would be notified to leave the city, and that the United States forces would be glad to have as many as possible removed. All this actually happened at the beginning of July. It was easy to foresee at the end of June.

Fifth.

Effect Declaration of Paris.

Again the opinion of the District Court overlooks the change in the law effected by the adhesion of this Government, at the beginning of the war, to the Declaration of Paris.

Stat. at Large, 2 Session, 55th Congress; Proclamations, p. 29; Appendix to this Brief, p. 64.

1. One important result of this declaration is stated fully by Pistoye and Duverdy—*des Prises*, Volume 1, page 365:

"Notwithstanding a war, neutrals continue

their peaceful relations with the belligerents. This is their right. But there are circumstances in which this right must suffer some restriction. Those neutrals should do nothing which can interfere with the plan of campaign, either offensive or defensive, of belligerents. * * * * We lay it down as a principle, that in order to constitute a blockade the place must be invested by a sufficient force to render entrance dangerous to ships which might wish to go in. In a word, every blockade must be real and effective."

At pages 373 and 375, the authors state expressly that by the modern law, in consequence of the Declaration of Paris, a vessel must be notified to depart from before the blockaded port before she can be captured, and that the contrary rule was the result of the doctrine of the British Orders in Council during the Napoleonic wars, which is now given up by that country. At page 375 they con tinue:

"The old rule was that it was a breach of blockade to enter upon a voyage to the blockaded port. This rule is now changed, because neutrals are obliged only to respect effective blockades. It may well be that a blockade of which official notice has been given, is not an effective blockade, or it may be that a blockade which has been established by a sufficient force, may have ceased to exist. Neutrals then have the right to begin a voyage to a blockaded port in order to see if the blockade still continues. They are only guilty when, while the blockade continues, they actually endeavor to break it."

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* *Ib.*—"Les neutres continuent, malgré la guerre, leurs relations pacifiques avec les belligérants. C'est leur droit; mais il y a des circonstances ou ce droit doit souffrir des restrictions. Ainsi les neutres ne doivent rien faire qui puisse entraver le systeme d'attaque, ou de defense des belligerants."

* Nous poserons en principe que, pour qu'il y ait blocus, il faut que la place soit investie par des forces suffisantes pour en rendre l'entrée perilleuse aux navires qui voudraient s'y introduire. Ainsi, tout blocus doit être réel et effectif."

2. This effect of the Declaration of Paris is only an affirmation of the original American rule, which the stress of the war with Napoleon led Lord Stowell to restrict. The stress of the war with the South induced our Courts, at that time, to follow to some extent the English rule. Our Government had not then declared its adhesion to the Declaration of Paris. But now that we have joined with the other civilized nations in this important Declaration, there can be no reason to doubt that the old American rule is reinstated in this country.

Wheaton on Captures (pp.342,343),quotes a letter from the British Admiralty Office, January 5, 1804 (by authority Secretary State Foreign Affairs, page 342). In this it is stated that the British Government "sent orders to Commodore Hood not to consider any blockade of those islands as existing, unless in respect of particular ports which may be actually invested, and then not to capture vessels bound to such ports, unless they shall previously have been warned not to enter them."

This was approved by the Government of the United States (*Ibid.*, 353, Dispatch Mr. Pinckney to Marquis Wellesley). Again, in another dispatch our Minister maintains (pp. 354, 355):

"That a vessel cleared or bound to a blockaded port shall not be considered as violating in any manner the blockade, unless, on her approach toward such port, she shall have been previously warned not to enter it."

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* "On considerait comme une violation de blocus le fait de se diriger vers des lieux qui étaient bloqués. Aujourd'hui il n'en saurait être de même, car des neutres ne sont obligés de respecter que les blocus effectifs; or, it peut se faire q'un blocus notifié efficiellement ne soit pas effectif, il peut même se faire qu'un blocus qui a été etabli avec des forces suffisantes ait cessé d'existeı; les neutres sont dans leur droir de se diriger vers un port bloqué pour voir si le blocus subsiste toujours; ils ne sout coupables que lorsque, le blocus existant, ils cherchent a le violer."

Wheaton's Note to Olivera *vs.* Union Ins. Co., 3 Wheat., 196, states the rule on this subject in substantially the same terms.

In Sperry *vs.* Delaware Ins. Co., 2 Wash. C. C., 243, 248, Mr. Justice Washington held that the question was always as to the *bona fides* of the enquiry, and that there could be no condemnation if there was no intent to force the blockade.

To the same effect are

The *Dispatch*, 1 Acton, 163.
The *Little William*, 1 Acton, 141.

In this case the Court of Appeal reversed Sir William Scott. The capture was the same as that under consideration in the Sperry case.

In Medeiros *vs.* Hill, 8 Bing., 231, 234, the Court says:

"Neither that case nor any other that can be cited, has laid it down that the mere act of sailing to a port which is blockaded at the time the voyage is commenced, is any offence against the law of nations, where there is no premeditated intention of breaking the blockade if it shall be found to continue in force when the ship arrives off the port."

Even in the Civil War cases there is an endeavor not to depart from this old American doctrine. In every case where the ship was condemned for intended breach of blockade, it was held that there was bad faith on her part.

The *Admiral*, 3 Wall, 603.

At page 615, the Court says:

"The mere act of sailing to a port which is blockaded at the time the voyage is commenced, is not an offence against the law of nations, where there is no premeditated intention of breaking the blockade. It is equally well established that it is illegal for a ship having knowledge of the existence of a

blockade to attempt to enter a blockaded port in violation of the blockade."

In the present case there was no attempt to enter any port. The *Adula* anchored and asked permission.

Indeed, where no blockade of a particular part has been officially declared, how can a neutral ascertain whether her entry will be forbidden except by going there.

3. On the authority of the cases above cited, the *Adula* could not be legally condemned, even if Guantanamo had been, by proclamation and in fact, a blockaded port. There was not the slightest secrecy in her movements, nor as to the ports to which she was to sail. Her sailing directions were plain, and have every stamp of honesty and were shown with the utmost frankness to the United States Consul at Kingston. In them the Captain is told to "proceed direct" to Guantanamo where he would "find, no doubt, American warships off the port." The Consul was also shown the charter, and was notified of the time the *Adula* was to sail, and a regular clearance for Guantanamo was obtained from the Collector of Kingston (p. 237). The Captain was even instructed to show the Commanding Officer of the squadron his sailing directions for the entire trip, in connection with the request for permission to enter Guantanamo. No conduct could have been more honest, and in no reasonable sense can it be said that the *Adula* had been warned not to approach the port. It was therefore her absolute right under the Declaration of Paris, even granting that the port was blockaded, to proceed to Guantanamo if she had no intention of breaking the blockade. Such an intention cannot possibly be imputed to her. Even if she had entertained the slightest hope, when sailing, that Guantanamo would be

found unprotected, that point was settled after she encountered the *Vixen*. Had she been proceeding as a blockade runner, she never would have acted upon the *Vixen's* invitation to proceed.

4. In the Civil War cases on the right to enquire of a blockading squadron, stress is uniformly laid on the fact found to exist that there was an actual intent to run the blockade, and that the enquiry was a pretext only. They dwell also on the danger of evasion if such a pretext is allowed. But where, as in the present case, no such question arises, and the neutral deliberately puts himself in the hands of the belligerent, no possibility remains for a claim that the enquiry could be elusory. Moreover, even the most rigid of those cases admitted that it was lawful for a vessel to enquire at a port not blockaded, or to seek there leave to enter one that was blockaded. In the case at bar, it has been shown that Guantanamo was not blockaded. It was, therefore, entirely within her right as a neutral, that the *Adula* should go there and ask leave to communicate with Santiago.

5. But apart from this, we stand distinctly on the proposition that the United States had not, at the time of the Civil War, become a party to the Declaration of Paris. At the beginning of the Spanish War it acceded to this Declaration, and must be taken to have recognized the consequences of such adhesion, pointed out long before by writers of authority on international law.

The common law rule: *Quando lex aliquid alicui concedit, concedilur et id, sine quo res ipsa esse non potest,** is applicable even more to interna-

*This rule was thus stated by Sir John Taylor Coleridge in Lord *vs.* Commissions, 12 Moo., P. C. Ca., 473, 499. "If you grant anything, you are presumed to grant, to the extent of your power, that without which the thing granted cannot be enjoyed."

tional acts than to local charters; especially to a great and beneficial modification of ancient rigor, in line with the progress of modern civilization. The whole system of international law is a growth and development. This Court has always been ready to recognize this growth, and to construe beneficially all treaties which have for their object the protection of the rights of neutrals, and the mitigation of the burdens of war.

This is especially true, in view of the changes in naval warfare. Blockades are now maintained by steam vessels of great speed, armed with search-lights aud long range guns. To evade them is far less easy than when they were maintained by sailing vessels, and when a swift sailer, getting to windward of them, could easily slip in.

The *Olinde Rodrigues*, 174 U. S., 510, 519.

The question whether a vessel is trying to run a blockade is a question of fact, and the rule as to enquiry is merely one of convenience, to be modified by new conditions of warfare. The *Adula*, a vessel whose speed was eight and a half knots (p. 148), by approaching to make enquiry of a swift cruiser, really put herself more completely in the latter's power.

In The *Juno*, 2 C. Rob., 116, Lord Stowell held that a neutral ship which had obtained a license from the British Government to take a cargo into Amsterdam should not be forfeited if the master, *bona fide*, brought a cargo out, although permission to do so was not expressed in the license. The Court says (pp. 118, 119):

"I will go farther, and say that if I was convinced that there had been an honest mistake on such a matter; if there appeared nothing insidious, nothing more than a misapprehension on the part of the neutral master, I should not apply too

strictly the maxim, *ignorantia juris non excusat*, against a foreigner, mistaking the exact meaning of a license of another country and in so doing should persuade myself that I did no more than what an equitable regard to the honor of the country which granted such a license must be supposed to require. * * * The license is silent on that point; but having said that, if I was convinced the party acted under an honest application of his license, though erroneously, I should think him entitled to the most liberal interpretation. It will be proper for me to consider what the man did, that I may see, supposing that there has been a mistake, whether it was a mistake of honest conduct, purely erroneous and innocent; thinking that, if it is so, it would be sufficient for the present case. The master takes the returned cargo on board, and comes to a port of this kingdom, and solicits the protection of a convoy, acting as openly and with as little concealment as possible. There is nothing in the *res gesta* on which the imputation of fraud can be fixed."

Sixth.

Intention to run the blockade.

The rule on this subject is stated by this Court in the Olinde Rodrigues, 174 U. S., 535.

"The evidence of evil intent must be clear and convincing before a merchant ship belonging to citizens of a friendly nation, will be condemned."

On the same page this Court, in summing up the reasons why the French steamer seized in that case should not be condemned, refers to the fact that she was owned by a "widely known and reputable company * * * and the testimony of her captain and officers denied any intention to commit a breach."

Although therefore, circumstances of the gravest suspicion existed in the case of the French steamer, this Court nevertheless refused to condemn her. In the case at bar no circumstances of suspicion exist. Everything points to the fairness and legality of the voyage as fully shown under the previous points.

In the Prize cases, 2 Black, 635, the Court says (p. 675):

"All reasonable doubts shall be resolved in favor of the claimants. Any other course would be inconsistent with the high administration of the law, and the character of a just government."

This salutary rule was overlooked by the District Judge, who appears to have been influenced, either by recollection or by tradition of the blockade running during the Civil War. The Court, instead of framing interrogatories which would be suitable for the existing case, adopted those which had been in use during the Civil War (p. 80). These were skillfully drawn to elicit information as to false papers, deceptive registers, concealment of contraband of war, and the like. But all the prize cases during the Civil War may be searched in vain for an instance of a vessel going in broad daylight to the entrance of a port claimed to be blockaded, exhibiting herself freely to the armed vessels of the power supposed to be maintaining a blockade, anchoring and giving signals for a pilot. On this crucial point of intent the entire case broke down from the first. The hearsay to the contrary in Ex. 34 is not evidence.

It is possible that in view of the exigencies of the war, it may have been proper to seize Solis and search his papers. But when this was done it was manifestly the duty of the United States naval authorities to send the *Adula* about her business. Everything that was done after that was a breach

of international comity, a plain violation of the law of nations. The action of the Court below shows a failure to appreciate the facts of the case. Authorities are cited, applicable enough to the business of blockade running as it existed during the Civil War, but entirely irrelevant in the present controversy.

The *Adula* would never have been arrested had it not been for the suspicion that Solis, who was the charterer, was endeavoring in some way to carry communications to the Spanish forces that would be prejudicial to the United States. This suspicion was absolutely dispelled by the examination of his papers. The United States naval authorities acknowledged this by letting him go free.

If the *Adula* violated any law in going to Guantanamo, Solis violated the same law. If the ship was liable to punishment so was he. The judgment in his favor should for a much stronger reason have been extended to the neutral ship on which he was.

The learned District Judge quotes the *Circassian*, 2 Wall, 135, to support the proposition that "the *Adula* was subject to seizure from the time of sailing with the intent to run the blockade."

This decision need only be examined to make the distinction manifest between it and the present case. The charter there contained an express stipulation that the steamer should "run the blockade if so ordered by the freighters" (p. 152). A collateral memorandum contained this engagement by the charterer: "The merchandise shall not be disembarked except at New Orleans, and to this effect he engages to force the blockade." Had these clauses been contained in the *Adula's* charter and letter of instructions, the cases would be parallel. Now they are antipodes.

Seventh.

Position of the United States Consul.

Much stress was laid in the Court below upon the action taken by the United States Consul at Kingston. The claim is made that he forbade the sailing of the *Adula*. To the argument based on this proposition we reply:

1. The Consul had no authority in the premises. This he himself admitted. The only evidence on this subject which was before the Court on the depositions *in preparatorio* was that given by Solis (pp. 106, 109, 114; Int. 12, 22, 41). The substance of the testimony is that Solis thought he could get an express permission from the Consul to enter the port of Guantanamo with the *Adula*. To obtain this he called upon the Consul with a letter of introduction from a mutual friend. At p. 106 he says:

"I explained to Mr. Dent the idea of my voyage. He told me he was sorry he could not give me the passport I wanted, because he was not allowed to give such passports unless he had permission from the American authorities in Washington. As I was going to leave two hours afterwards he said there was no time to ask permission. I said: 'Look here, Mr. Dent, I don't think there is anything wrong, because my intention is to go to Guantanamo and ask permission of the American Admiral to allow me to go. If he does not allow me I come back.'"

2. Inasmuch, however, as upon the hearing great stress was laid upon the testimony as to the interview between Solis and the Consul, the claimant asked leave to put in additional evidence on that subject, and produced the statement of Forwood's before mentioned (which was received as an affi-

davit), showing exactly what took place between him and the Consul. The way in which this was treated in the Court below shows, as has already been argued, that entire credence was given to Mr. Forwood's statement. What he says on this subject is at page 34 of the Record.

From this it distinctly appears that no formal notice not to go was given by the Consul to Forwood. At the most the statement amounted to a warning that the ship would not be allowed to enter—a far different thing from a prohibition to enter. Forwood later expressly testifies that if such an official notice had been given, the ship would never have been dispatched (p. 35). The most that can be said of the conversation is that Dent advised Forwood not to send the ship, and called his attention to the claim that Solis was a Spanish agent "carrying $300,000 in gold to buy over the rebels in the American camp." Forwood's reply was, "I told him I had inquired about the man, and it was one of the usual Kingston yarns." In this respect it is clear that Forwood was right. The most careful search and all the inquiry that the diligence of the Government could suggest, disclosed no evil in Solis, and he in fact was released. The rigor of the search is described by Clarkson, the first officer (p. 126, Int. 23); see entries in Log, (pp. 199, 201-207, 209).

3. A consular warning, even if expressed officially, could scarcely be held as closing a port unless in compliance with an official proclamation of his government.

See authorities cited under First Point, subd. 4, p. 14.

Eighth.

The Position of Solis with Reference to the Voyage.

1. Stress was laid in the Court below on the fact that Solis was a subject of the Queen of Spain. He was born near Havana. His home was in Manzanillo, and he says in answer to the first interrogatory (pp. 103, 104): "I am a subject or citizen of Spain, and owe allegiance to Spain."

At page 109, in answer to interrogatory 22, he states his position fully, and says that during the insurrection his conduct had been that of a neutral.

"I have been in Cuba in a peculiar way. I never went in politics, and I was French Consul. They wanted me to be mayor of the town. I told them no; I was French Consul. I used to go into the country, fifteen or twenty miles from the city, and country people always treated me nicely. The people I have in my saw-mill all know me very well. After General Weyler came in the country I could not go in the country any more, because I feared that General Weyler might suspect me of being an insurgent."

There is not a particle of evidence that he ever in any way co-operated with the Spanish authorities during the war, or rendered the slightest aid or comfort to the Spanish forces.

2. Stress was laid upon the fact that Solis had a passport from the Spanish Consul to enter the cities to which he was bound, "and take passengers, refugees." At p. 106 (answer to 12th interrogatory) Solis gives the reason for this:

"He gave me that authority, it being for the sake of humanity, to take those refugees off."

Counsel entirely overlook the fact that in order

to accomplish the object of the voyage it might become necessary to have the consent of the Spanish authorities as well as of the American authorities. Either was at liberty to refuse it. If both consented the business would be lawful, and it was for the real interest of both to consent.

3. Stress was also laid upon Solis having what is described in the Record as a personal passport (p. 220). This states as follows:

"Don Josè R. Solis Vazquez, native of Santiago de las Vegas, province of Havana, 44 years of age, married man, by profession a merchant, dwells in Marina street, No. and resides habitually in that ward and at that number."

It is dated at Manzo, April 13, 1897.

How extraordinary the claim that an innocent document like this, issued to a native of Cuba more than a year before the war, should indicate in any way that he was hostile to the American cause, or had any purpose to assist the Spanish forces.

4. Again, stress is laid upon a statement of Captain Yeats (p. 101, 39th Interrogatory).

"To the best of my knowledge and belief, the *Adula* is owned by Forwood Brothers, and her destination was to Guantanamo Bay for refugees, and thence to Santiago and Manzanillo and such other places that the charterer may desire to go after we had visited those ports."

In reference to this testimony of the captain, the attention of the Court is called to its own language in the Olinde Rodriguez, 174 U. S., 510, 528:

The Captain's deposition "was given in answer to standing interrogatories and not under an oral examination; that the statute (Rev. Stat., Section 4622) forbade the witness to see the interrogatories, documents or papers, or to consult counsel, or with any persons interested, without special authority from the Court."

Counsel for the claimant was not present, and had no opportunity to put questions, and thus elicit explanations.

Taking the statement already quoted in connection with the answer to the 18th interrogatory (p. 97) it appears distinctly that the statement was given simply from memory of the contents of written papers, to which at the time of the answer the witness had not access. At page 97, referring to these papers, he says:

"I read my letter through only once, that came from Captain Forwood, and I cannot say exactly what is contained in it. * * * I don't exactly remember the exact tenor of the papers that were on board the vessel. It is a long time since I have seen them."

The testimony, be it noted, was taken July 22, 1898 (page 94), nearly a month after the seizure, and the surrender of the papers to the United States authorities.

Now it is clear that in any other case the Court would disregard entirely this oral evidence as to the contents of the instructions. These were in writing. They specify distinctly three ports and three ports only, to which the vessel was to go (p. 187). The only option that the charterer had was to omit some of the ports. "He has the option of going to the three ports, but it may be convenient for him to go to only one, or even two." The charter (page 187) is to the same effect:

"The ports that the vessel is to go to are Manzanillo, Santiago and Guantanamo. * * * If she is not permitted to enter either Manzanillo, Santiago or Guantanamo the vessel is to return to Kingston."

Could anything be more unjust than to seize an expression of the Captain such as that already quoted, not stated positively, qualified as has been

shown, by himself, and set it up as a ground for condemnation in a case like the present? The charter and instructions were in writing. There is not the slightest pretense for a claim that they were in any degree collusive or deceptive. Captain Forwood's affidavit and statement show conclusively that he was acting *bona fide* in the matter; that he made a contract with Solis which he believed he had a right to make, and the terms of which were enforceable by either against the other. The captain was not present when the agreement was made. He does not claim to have received any instructions from Captain Forwood, excepting those that were in writing. How absurd, as well as unjust, then, to pretend that there were any instructions except those that were in writing. This is especially so when the fact of authority, outside of or in opposition to the written instructions, is absolutely denied by the charterer.

At page 112 (36th interrogatory) Solis says:

"I was seasick in my room, suffering very immensely. I went to bed when we left Kingston, and didn't get out of bed until we arrived at Guantanamo Bay. The orders given to the captain were to go straight to Guantanamo. I had no right to direct the captain. We agreed that the vessel would go from Kingston to Guantanamo, from Guantanamo to Santiago, and from Santiago to Manzanillo. If I was to state to the captain to go here, he would say, 'You have no right to direct me.' I did not have the right to direct them to any particular port. We were not trying to take in ports on our way. If I could not get to Santiago, I had to go to Manzanillo. I had no right to direct the navigation of the ship. The only right I had was to direct it from Kingston to Guantanamo, and from Guantanamo to Santiago, and from Santiago to Manzanillo, and from Manzanillo to Kingston."

5. Under the charter in question the *Adula* was

officered and manned by the owners, and her navigation was under the direction of a captain employed and paid by them. The whole space of the steamer is put at the disposal of the charterer, "for the conveyance of passengers from Cuban ports hereinafter to be named, to Kingston." "For these services the charterer shall pay the company for the hire of the vessel one hundred pounds per day" (p. 11).

The instructions accompanying the charter were given, not by Solis, but by Captain Forwood, of the Atlas Steamship Company. They show distinctly that the entire navigation was under the direction of the captain; that Solis had nothing to do with it, excepting to waive the going to one of three specified ports (pp. 12, 13).

Under these circumstances it is well settled that the charterer had no special ownership in the vessel. He was a mere contractor for a designated service, and the duties and responsibilities of the owner were not changed.

Leary *vs.* The United States, 14 Wall., 607.

Morgan *vs.* The United States, 14 Wall., 531.

Shaw *vs.* United States, 93 U. S., 235.

In the Morgan case this Court say:

"In no sense were the United States owners of the vessel. They had nothing to do with her management and only reserved to themselves the right to say how she should be loaded, and where she should go."

To the same effect is Bramble *vs.* Culmer, 78 Fed. Rep., 497 (4th Circuit).

S. C., 42 U. S. App., 303.
24 C. C. A., 182.

In the latter case it was held that the fact that

the pilot was to be paid by the charterer did not vest the latter with a special ownership in the vessel. It is manifest from a careful examination of the charter party in the present case, that the only reason why the charterer was to provide a good and efficient Government pilot was that the company was not willing to take any risk in regard to the entry to the particular ports.

The charter expressly provides that "it shall not be deemed a breach of this agreement should the steamer be prevented from entering any of those ports from causes beyond the control of the company."

In short, the whole tenor both of the charter and of the instructions, shows that both parties clearly understood that it was quite possible that the belligerents might not allow the *Adula* to enter any of the specified ports, and that the risk arising from this cause, that the charterer might have to pay hire, although he received no passenger money, was upon the charterer. But the right of control and management by the company is sedulously retained.

Solis admits that he was fully informed of the instructions given by Captain Forwood to Captain Yeats (p. 110).

It follows that there can be no claim to forfeit the *Adula* on the ground that Solis was in possession of letters directed to persons in Cuba. This is one of the points on which the claimant sought to introduce additional evidence (page 29) to the effect that Captain Forwood "had no knowledge, information or suspicion that said Solis would take any letters from Jamaica to Cuba." Solis did in fact testify, as has been shown, and as the claimant asked permission to show more clearly, "that such letters were taken by him (Solis) at the last moment, solely in answer to the importunities of persons who for a long time had no opportunity

of communicating with friends in Cuba; that he originally did not intend to take any letters; that he did not conceal the same, and would cheerfully have submitted them to the inspection of the United States naval officers, and not have undertaken to pass the same through the lines without their consent" (p. 29).

Under the circumstances in evidence, these letters must be considered like letters which are offered to the authorities having control of military lines, to be forwarded under a flag of truce. In time of war this courteous method of alleviating some of its unnecessary horrors is often resorted to. Certainly the request to be allowed to forward such letters can never be a cause of forfeiture.

The *Acteon*, 2 Dods., 48, 51.
The *Rapid*, Edwards, 228.

Even if the letters were contraband, that would not forfeit the ship.

The *Peterhof*, 5 Wall., 28, 61.
The *Springbok* 5 Wall., 1.

As to the letters on the steamer addressed to persons in the United States by persons in Cuba, evidence was offered in explanation, to the effect that Forwood had no knowledge, information or suspicion that such letters were brought on the *Adula*. Further, that "William Walker, the former captain of the *Adula*, will testify that such letters were brought by him from Cienfuegos at a time when that port was not blockaded, and solely as a matter of courtesy to the writers and the persons to whom they were addressed, and that such letters were letters wholly of business or friendship, and contain nothing which might not lawfully have been permitted to pass through the American lines" (page 29). The abridgment of these letters describes

them as relating solely to commercial and domestic matters (page 213).

6. An attack was made on Solis in the Court below because he expected to make money from the transportation of refugees. This is irrelevant. If his business was lawful and praiseworthy, it is not to be condemned because the person engaged in it would benefit by it. The refugees who were desirous of getting away were able to pay for the service. All accounts agree that many of them were persons of wealth, anxious to pay for food, shelter and transportation, none of which were to be had in Santiago or its vicinity on land, but which, as now appears, were on the sea, near Santiago, awaiting only the consent of the United States naval authorities. Indeed, the very criticism is an admission that the object of the voyage was a lawful one.

7. The District Judge (p. 61) calls the business of Solis "suspicious in the extreme." As the *Adula* cannot be charged with trying to land provisions, he must have considered communication with the enemy the object of the voyage. But if this had been Solis' object, how absurdly his means were adapted to his ends. Who would pay one hundred pounds a day for an empty steamer when a schooner or despatch boat would be cheaper, less conspicuous, and better suited to the purpose? A small vessel could much more easily have landed despatches along the coast where Spaniards were and Americans were not.

Ninth.

Additional Testimony.

The Court below cites the *Pizarro*, 2 Wheat.,

240, in support of the proposition that if the captured crew "fraudulently suppress any material facts they will not be indulged with an opportunity to disclose what they please," etc.

But where is the fraudulent concealment in this case?

The witnesses when examined in secret, answered only questions put to them. These questions were drawn with reference to a case widely different from this. The witnesses had no opportunity to explain. In the *Pizarro*, the witnesses were twice examined in open Court (p. 230). Of their testimony Mr. Justice STORY says (p. 241): "In the present case there can be no doubt that there has been a gross prevarication and suppression of testimony by the master and supercargo."

It may be noted that notwithstanding this, the *Pizarro* was not condemned, but restored to her owners (pp. 230, 247).

But no Court should now apply the dictum in the *Pizarro* literally. The law of evidence has made great progress since that case was decided. Courts and lawgivers now recognize that in order to get at the real truth of a case, all parties acquainted with the facts, whether interested or not, should be examined and cross examined in open Court. The observation already quoted of the Chief Justice of this Court, in the *Olinde Rodriguez*, shows that prize cases are not an exception to this amelioration of the law of evidence, and that the examination of witnesses in secret, on written interrogatories, without the aid of counsel, is no longer considered as the perfection of justice. It was, indeed, most unjust to assail the good faith of Solis and the owner of the *Adula*, and yet allow them no opportunity to offer explanations in open Court.

The only excuse for the denial of the application to introduce such evidence is that given in the

order, viz.: that it does not vary the legal effect of the conceded facts. The more carefully the case is examined, the more clearly does it appear that while the opinion claims that bad faith was shown, the decision is based on the proposition that a *bona fide* voyage to ask permission of the navy to remove refugees was *ipso facto* a cause of forfeiture.

Tenth.

The course of the "Adula" on her last voyage.

Two points were made in the Court below on this subject:

(1.) It was claimed that the course of the *Adula* was not correctly entered in her log, and the deposition of Lieutenant Anderson, taken *de bene esse*, was offered in evidence on the motion for additional proofs. There is testimony in this deposition bearing upon the question as to whether or not the course of the *Adula* was correctly stated in the log. The captain, however, testifies in answer to the 36th interrogatory (p. 92) that the winds and currents carried her to the westward. For this Lieutenant Anderson makes no allowance. He also takes it for granted that the captain got a noon observation of the sun on the 29th. The captain says, however, that it was cloudy and he could get no observation of the sun (p. 101) and the log shows that it was cloudy on that day (p. 199). This was one of the points on which the claimant asked to take additional testimony (Paragraph C, p. 27).

(2.) The point was also made that the course of the *Adula* was directed towards the harbor of Santiago, and that on seeing the war vessels there, she

changed it towards Guantanamo. The reasons given by Captain Yeats for what he actually did in this matter are entirely satisfactory, and not contradicted in any way He did not know the coast east of Santiago, and he expected to communicate with the Admiral off that port.

He says (p. 96, 12th Interrogatory) :

"The reason for our going by Santiago was on account of my not being acquainted with the coast line to the eastward of Santiago, and I had no large scale chart, and therefore I steered more to the westward than I should have done, and I went more to the westward to make out the land, because I knew the coast about Santiago and I didn't know the coast about Guantanamo Bay."

Again at page 100 (36th interrogatory) he repeats the reason with some amplification, and at page 101 he says :

"I believe we went to within about ten miles of Santiago. I recognized the highlands about Santiago. I won't say it was ten miles ; it might have been ten miles. Our course was not altered to any other port except Guantanamo. That was the port that we were steering for. * * * The reason for changing my course was seeing the vessels at Santiago, and I expected to be stopped, and I changed my course from the west to the eastward, and then I changed around to the westward. The first time I changed around to the eastward to come to these vessels, and when I found there was no vessels approaching us I then turned right around and turned to the eastward and hauled for the eastward for Guantanamo Bay."

Morris also testifies (p. 117) :

"The *Adula* left Kingston to go direct to Guantanamo, and she went direct to Guantanamo ; she didn't go to any other port, and she didn't get in sight of any other port."

See also evidence of Clarkson, the first officer (Int. 36, p. 127).

Additional testimony was offered, to the effect that the Captain

"expected that one of the United States vessels, which were well known to be off the port of Santiago, would come to meet him, and that application could in this way be made by him to the commanding officer of the squadron, who was supposed to be off Santiago, for leave to enter the port of Guantanamo. Captain Yeats of the *Adula*, will so testify, and that his reason for so doing was that no vessel came to meet him, that it was towards evening, and that if he went further towards Santiago, it would be too late to enter the harbor of Guantanamo that night, that the coast outside was rocky and not well lighted" (p. 27).

The answer filed by the United States to the motion (page 42) insists that Captain Yeats has already testified fully on these subjects. One of two things is clear. If he did testify fully, his explanation is satisfactory. If on the other hand his testimony is not considered sufficiently full, he ought to have been allowed the opportunity to make it so. The answer filed by the United States would seem to intimate the unwarranted claim that the witnesses on the *Adula* would not tell the truth, and that therefore they were not to be allowed any opportunity for explanation.

If the depositions taken *de bene esse* were to be received at all, claimant had the right to answer them. The Court below treated the affidavits as an answer, assumed the correctness of the facts therein stated, and held that the *Adula* should be condemned, as matter of law, nothwithstanding those facts.

The absurdity of the whole position on the part of the captors is best shown by the undisputed fact that the *Adula* was at anchor when she was captured (page 107, 19th Interrogatory) that she was then whistling for a pilot, and that she made no

concealment whatever of her movements at any time, but on the contrary notified them to the United States authorities before she sailed.

Eleventh.

Previous Voyages.

It is admitted that there can be no forfeiture for what was done on previous voyages.

The Wren, 6 Wall., 582.

But an inference of guilty intent was sought to be drawn from these voyages. The fallacy in this consists in ignoring the fact that trade between the British colonies and Cuba was legal, except so far as blockaded ports were concerned.

1. The proclamations in the record show distinctly that the United States Government never undertook to blockade the whole of Cuba. The blockade first declared was only of the north coast of Cuba between Cardenas and Bahia Hondo, and the port of Cienfuegos, on the south coast (p. 211). The second proclamation dated June 27, 1898, extends the blockade, so far as Cuba was concerned, only to those ports on the south coast "from Cape Frances to Cape Cruz" (p. 212). Communication between neutrals and the rest of Cuba was therefore lawful.

The object of the limitation is apparent, when it is remembered that the insurgents were strongest in the eastern provinces, and it was important not to hinder communication with them.

2. So far as the first two voyages to Cienfuegos were concerned, they were made with the full authority and consent of the United States Gov-

ernment, and no possible blame can be imputed to the owner of the *Adula* for sending her on these voyages.

3. So far as the third voyage to Cienfuegos is concerned, there was no blockade at that time. No vessel was seen off the port either going in or coming out (pp. 32, 33 102). No suggestion is made that stress of weather had obliged the blockading vessels toleave the port, and we know from the history of the times that the vessels that had been stationed there, were ordered to leave that port and concentrate before Santiago and Guantanamo.* This is one of the facts which claimant asked leave to prove (pp. 26, 27, parag. *b*). After leaving Cienfuegos the last time the *Adula* was hailed by the *Yankee* and warned not to go there again. But no objection was made to her having been there. This was a tacit approval. The statement of the District Judge that she was " warned off again and again " is absolutely erroneous.

It is extraordinary that stress should have been laid in the Court below upon the delivery of provisions at Cienfuegos. The absolute distress for want of provisions that existed in many parts of the Island of Cuba, which distress was largely caused by the action of Gen. Weyler with reference to the reconcentrados, was one of the determining causes of the war. To maintain that it was unlawful for a neutral vessel to enter a port which was not in fact blockaded, and leave provisions there, shows the failure to appreciate the actual situation which led to the decision of the Court below.

4. The same observations apply to the criticisms passed upon Solis. The charge is made that he had been engaged in the business of blockade running. Of this there is not a parti-

* Morris, History War with Spain, 188.

cle of proof. Telegrams were found in his possession which might lead to the conclusion that he had been engaged in bringing refugees away from Cuba and in taking provisions there. But Montego Bay, St. Ann's and Kingston, the places mentioned in these telegrams (pp. 220–222), are all in the Island of Jamaica. There is not a particle of evidence that any of Solis' connections with the Island of Cuba had involved a breach of the blockade, or communication with any of the blockaded ports.

At page 29, paragraph j, claimant offered proof "that in fact large portions of the island have been ever since the declaration of war occupied by friends and not enemies, of the United States, cooperating with them to drive the land and naval forces of Spain from Cuba, and Cuban waters" (see Appendix, pp. 76, 77).

5. The facts as to these previous voyages really corroborate the testimony as to the *bona fides* of the last. They show the *Adula* doing exactly what it is alleged she intended to do upon the voyage on which she was seized. The instructions given Captain Walker on these voyages (pp. 231–234) differ in detail from those to Captain Yeats. But the substantive instruction that the voyage is solely to bring away refugees is the same. The necessity of communicating with the United States naval authorities is emphasized.

6. If any importance is attached to Capt. Yeats' letter to his parents (pp. 234–236), we reply:

(*a.*) This was written July 13, 1898, two weeks after the seizure. It was not evidence against the ship, for the captain had then no authority to bind her. It was not evidence against him, for it was not shown to him, and he had no opportunity to explain it.

(*b.*) As a statement of what occurred on previous voyages it is irrelevant. If the information Yeats claims to have received, that Gen. Blanco's secretary had sailed on the *Adula* from Cienfuegos is correct (and there is no proof that it was) he had a right to sail on her, for Cienfuegos was not then blockaded. The captain states: "We were quite ignorant of the fact, especially as he had assumed another name."

(*c.*) As to the final voyage the letter states: "As far as the ship is concerned, she was on perfectly legitimate business, fetching refugees" (p. 235).

(*d.*) If then it be asked why Capt. Yeats says: "I have anticipated this for some time";—the answer is plain. The ship was dealing with belligerents.

To carry a flag of truce to the belligerent lines is hazardous. The Spaniards had seized the ship on one of the voyages and detained her sixty hours (p. 31). It was possible to suppose that the Americans might do the same later. The surprise is that they treated her worse than the Spaniards had done. As the Captain says: "If they don't prove Mr. Solis guilty of trying to carry dispatches, this experiment will prove rather an expensive one."

(*e.*) The letter throws light on the rigor of the search, and the strictness of the guard kept over Solis, and demonstrates that if he had been guilty of taking dispatches he would have been detected.

(*f.*) As to the clipping from the New York *Sun* (pp. 236, 237), which Captain Yeats enclosed to his parents, it contained what Captain Forwood called "one of the usual Kingston yarns." Captain Yeats marked it "Humbug." It shows that the seizure was really a newspaper seizure, brought about by the fertile brain of a *Sun* reporter.

"What mighty contests rise from trivial things."

7. On all the previous voyages, it is plain that the sympathy and interest of the master were with the United States and he was distinctly of service to them (pp. 31, 32). It was the *Adula* that put the American navy on the track of Cervera's fleet.* On several occasions she was of service to our navy (Record, pp. 30-32). We have a right to use these facts as evidence of fair and not hostile intent.

Twelfth.

Spoliation Papers.

Much stress was laid on the argument in the Court below upon the alleged spoliation of the passport or consular letter granted by the Spanish Consul at Kingston, to Solis.

1. The positive proof was that no such spoliation occurred. Captain Yeats testifies (p. 98, Int. 19):

"There were no papers burned, torn, thrown overboard or concealed, nor was any attempt made to conceal any when the *Adula* was captured."

At page 100 (Int. 31, 32), he testifies that the U. S. officers have all the papers on the *Adula*, and that they were carried away by Captain McCalla, of the *Marblehead*.

Solis testifies to the same effect (pp. 107-108, Int. 18, 20). The other witnesses from the *Adula* testify to the same effect (p. 118, Int. 20; p. 125, Int. 20; p. 133, Int. 20; p. 140, Int. 20).

2. The argument that there was spoliation is

*Morris' History of the War with Spain, p. 191.

based upon the testimony of Solis (p. 106, Int. 12), that he got from the Spanish Consul a passport to the Spanish authorities "to allow him to go in and take passengers, refugees," and on the fact that this passport is not among the papers returned by Lieutenant Anderson. Lieutenant Anderson's affidavit on this subject is at pages 81, 82. He annexes a list of 151 documents. The affidavit, however (page 82), admits one error in the list and contains a statement that "if at any time hereafter * * * any further or other papers relative to the said captured property shall be found or discovered to the knowledge of the deponent, they shall also be delivered up." This would seem to contain a distinct admission that it was possible that another mistake might have been made by some of the United States officers. To admit this is to admit simply that they were human. It cannot be seriously claimed that the mere fact that no such paper was returned by Lieutenant Anderson, can outweigh the positive testimony of six witnesses that no spoliation of papers occurred.

3. The claimant asked leave to introduce additional testimony that this passport or consular letter was actually given to Captain McCalla (p. 26, paragraph a). An offer was made to obtain a duplicate thereof from the Spanish Consul at Kingston. The opposition of the captors to taking additional testimony indicates that Captain McCalla would not have testified that he did not receive this passport or consular letter. It might easily have been lost or mislaid, and its loss cannot possibly be attributed to the claimant.

4. In *The Olinde Rodriguez*, where there was an admission of the destruction of two bills of health, this Court says (p. 529):

"Transactions of this sort constitute in them-

selves no ground for condemnation, but are evidence more or less convincing, of the existence of such ground."

In the case at bar, even if there were any evidence to warrant an inference that there had been a spoliation of this paper, no inference could justly be drawn against the claimant. It was obvious that in order to remove refugees from Santiago the consent of the Spanish authorities would be necessary. It was therefore properly obtained. No secret was made of the fact, and none was possible. Solis made no concealment of the fact that such a passport existed. At page 111, Int. 35, he testifies fully as to its terms.

Thirteenth.

The fundamental question in this case is whether this Court will hold the captors to the pledges which were made by the Congress and the President at the beginning of the war. It is writ all over this record, and no ingenuity can blot it out, that this ship was the ship of a friendly nation; that she went to Cuba on a friendly errand, an errand of humanity, justified—indeed invited—both by the joint resolutions of the Congress, and by the Proclamation of the President; that boldly and without concealment she announced her purpose, and in broad daylight went to a harbor in full possession of our naval forces, and asked permission to enter. She had no force to compel admission, and used no guile to obtain it. For this she was seized—for this she was condemned. It is idle to say that Solis was a Spanish subject. He was no doubt suspected of hostile intentions. He was seized, his papers taken from him, his person

and effects searched, and no cause for detention was found in him. The Government took him to Savannah and let him go. They did not hold him as prisoner of war. They let him go. His being on board is therefore no cause for condemnation of the ship that carried him. Even the carrying of contraband of war in a neutral bottom forfeits the goods only, but not the ship. The *Adula* cannot therefore be condemned because Solis was on board. And the question recurs—Shall she be condemned because she went on a friendly errand, unarmed and openly, relying on the pledges of the Government of the United States, to enable the removal of non-combatants and neutrals from the lines of the American army and the walls of a beleaguered town?

This Court has done much for the honor and integrity of the United States. It is not too much to say that it has done more for the stability of our Government and its permanent prosperity than Executive and Legislature combined. The nobler American characteristics of honor and good faith this Court has always expounded and defended. To this Court, therefore, the owners of the *Adula* do now with confidence appeal.

Fourteenth.

Damages.

If the propositions already presented to the Court are correct, there was no probable cause for the seizure, and certainly none for the detention, of the *Adula*, still less for sending her in for condemnation as a prize. No circumstance of just suspicion existed when she was seized. None were disclosed by the search that was made by the United States

authorities. On the other hand it has been shown that her seizure was opposed to the declared policy of the Government, and that it was a serious prejudice to the operations of the army on land. Can there be any question that she would never have been detained had it not been for the rule giving captors a share in the prize money? No one certainly would underrate the daring or patriotism of the United States Navy. It is nevertheless true, not only of the United States Navy, but of every navy, that officers are sometimes influenced, perhaps unconsciously, by personal considerations. They have the power to seize. The law gives them under certain circumstances the right to seize and send in for adjudication. For reasons which have been found satisfactory by the Government in the past, they are given a certain personal interest in such seizures. There is therefore an inducement held out to make them. This being the case, it is but just that as the captors profit by successful seizures, they should bear the loss of an unsuccessful one. Under Section 4632 of the Revised Statutes "all vessels of the navy within signal distance of the vessel or vessels making the capture under such circumstances and in such conditions as to be able to render effective aid if required, shall share in the prize."

The aggregate proceeds of property already condemned as prize during the war with Spain amount to $716,662.35.

Doubtless the officers of the *Marblehead* and of the whole squadron at Guantanamo, under the section before quoted, participate in the distribution of this amount. There would seem to be manifest justice, in awarding damages to the claimant. As between the captors and the United States, the Government will undoubtedly deal justly with the captors.

Doubtless in some cases, as in the *Olinde Rodri-*

guez, circumstances of suspicion are so grave that the Court will compel the claimant to bear the costs and expenses of the cause. But where such circumstances do not exist, justice requires that claimant should recover the damages growing out of the seizure.

The Glen, Blatchf. Pr. Ca., 375.

In the *Juffrow Maria Schroeder*, 3 C. Rob., 147, the Court says (p. 153):

"The captor takes at his own peril and on his own responsibility to answer in costs and damages for any wrongful exercise of the rights of capture."

The rule on this subject is clearly stated by Lord STOWELL, in *The Acteon*, 2 Dodson, 48, 51:

"The natural rule is, that if a party be unjustly deprived of his property, he ought to be put as nearly as possible in the same state as he was before the deprivation took place; technically speaking, he is entitled to restitution, with costs and damages. This is the general rule upon the subject, but, like all other general rules, it must be subject to modification. If, for instance, any circumstances appear which show that the suffering party has himself furnished occasion for the capture, if he has by his own conduct in some degree contributed to the loss, then he is entitled to a somewhat less degree of compensation, to what is technically called simple restitution."

By this test the right to damages in the present case is clear. The suffering party furnished no occasion for the capture, and did not by his own conduct in any degree contribute to the loss.

This case was followed by the Privy Council in *The Ostsee*, Spink's Prize Cases, 174, less fully reported 9 Moo. P. C., 150.

The test stated by this Court in the *Charming Betsy* (2 Cranch, 64), is "Was there probable cause for the seizure?"

Judge STORY, in the appendix to 2 Wheaton, p. 11, thus states the rule:

"If the capture is made without probable cause, the captors are liable for damages, costs and expenses to the captured."*

These damages are stated in claimant's petition, paragraphs 5, 6, 7, Record, pp. 9, 10. They were in brief the breaking up of its coasting trade in Jamaica. The claimant was deprived of the *Adula's* use from June 29 to November 14, 1898 (p. 247), at which latter date she was released by consent of the United States upon claimant's giving a stipulation for $50,000 (p. 247). She was originally appraised, July 30, 1898, at $80,000 (p. 23). The Government meanwhile offered her twice for sale at auction at the upset price of $55,000, but without a bid (pp. 50, 51, 242, 247).

Fifteenth.

This Court should reverse the decree and order appealed from, decree that the seizure, detention and condemnation were unlawful and remit the cause to the District Court for the purpose of assessing the damages which have been sustained by the claimant by reason of the unlawful capture, detention and condemnation of the vessel.

EVERETT P. WHEELER,
Of Counsel for Appellant.

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*This appendix was republished in London with notes by Pratt, under the title "Notes on the Principles and Practice of Prize Courts." The passage referred to is at page 39 of this edition.

Historical Appendix Summary.

The following Historical Appendix shows:

I.--The war was commenced chiefly out of pity for a suffering people, an unusual state of affairs, but one which will become more common with advancing civilization. The President went so far as to issue an appeal to the religious and business elements of the community to aid the Cubans, and during the war enormous quantities of governmental supplies were distributed amongst them. The policy and conduct of the war was such as to assure private persons that any co-operation they might give by taking off refugees or otherwise would be welcomed by the government (p. 61).

This should be taken into account in determining what it was proper for a neutral vessel to do.

II.—As a natural consequence the government relaxed the strict law as to neutrals which prevailed in the Civil War, and declared its adhesion to the Declaration of Paris (p. 64).

III.—There was no blockade of Guantanamo Bay, as appears by the proclamation of blockade of June 27. The official documents appended show that the government did not blockade that port or consider it unfriendly, but desired to establish "*a naval station*" in which to coal and repair the Santiago fleet. Moreover, the port was not an unfriendly one for the surrounding country on June 29th was in the undisputed possession of the United States troops (p. 65).

IV.--The refugees from Santiago suffered intensely from starvation and exposure. Two hundred houses within the United States lines were invaded by 20,000 people. The telegrams sent by

the commanding general to the Secretary of War show that they seriously hampered the success of the campaign, (1) by causing him to delay bombardment through motives of humanity, and later accept a surrender on terms; (2) by exhausting army supplies and medical help at a time when there was not enough for United States troops, and by becoming a plague centre to disseminate disease (p.68).

To prevent the *Adula* taking away a large number of these refugees was not merely a military blunder but an act wholly incompatible with the motives and policy of the war.

Historical Appendix.

I.

Conditions in Cuba which led to the Spanish War and object of that War.

Message of the President to Congress on the Relations of the United States to Spain by reason of Warfare in the Island of Cuba, April 11, 1898:

P. 3.

"Our people have beheld a once prosperous community reduced to comparative want, its lucrative commerce virtually paralyzed, its exceptional productiveness diminished, its fields laid waste, its mills in ruins, and its people perishing by tens of thousands from hunger and destitution."

P. 4.

"The policy of devastation and concentration, inaugurated by the Captain-General's bando of October 21, 1896, in the Province of Pinar del Rio, was thence extended to embrace all of the island to which the power of the Spanish arms was able to reach by occupation or by military operations. The peasantry, including all dwelling in the open agricultural interior, were driven into the garrison towns or isolated places held by the troops.

The raising and movement of provisions of all kinds were interdicted. The fields were laid waste, dwellings unroofed and fired, mills destroyed, and, in short, everything that could desolate the land and render it unfit for human habitation or support was commanded by one or the other of the contending parties and executed by all the powers at their disposal."

P. 6.

"On the 24th of December last, I caused to be

issued an appeal to the American people, inviting contributions in money or in kind for the succor of the starving sufferers in Cuba, following this on the 8th of January by a similar public announcement of the formation of a Central Cuban Relief Committee, with headquarters in New York City, composed of three members representing the American National Red Cross and the religious and business elements of the community."

P. 11. "The grounds for such intervention may be briefly summarized as follows :

First. In the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate. It is no answer to say this is all in another country belonging to another nation, and is therefore none of our business. It is specially our duty, for it is right at our door."

P. 13. " In view of these facts and of these considerations I ask the Congress to authorize and empower the President to take measures to secure a full and final termination of hostilities between the Government of Spain and the people of Cuba, and to secure in the island the establishment of a stable government, capable of maintaining order and observing its international obligations, insuring peace and tranquility and the security of its citizens as well as our own, and to use the military and naval forces of the United States as may be necessary for these purposes.

" And in the interest of humanity and to aid in preserving the lives of the starving people of the island I recommend that the distribution of food and supplies be continued, and that an appropriation be made out of the public Treasury to supplement the charity of our citizens."

On Thursday morning (April 11th) the Presi-

dent received, by previous arrangement, a visit from the Ambassadors of Great Britain, France, Germany and Italy, the Russian Chargé d'Affaires, and the Austrian Minister. Sir Julian Pauncefote, the British Ambassador, as dean of the diplomatic corps, presented to him a note signed by the six visitors in their representative capacity, appealing "to the feelings of humanity and moderation of the President and of the American people in their existing differences with Spain" and expressing a "hope that further negotiations will lead to an agreement which, while securing the maintenance of peace will afford all necessary guarantees of the re-establishment of order in Cuba."

The President's response echoed the hope of a peace secured by "the necessary guarantees for the re-establishment of order in the Island, so terminating the chronic condition of disturbance there, which so deeply injures the interests and menaces the tranquillity of the American nation by the character and consequences of the struggle thus kept up at our door, besides shocking its sentiment of humanity."

It concluded by asserting the unselfishness of our Government's purpose in fulfilling its "duty to humanity by ending a situation the indefinite prolongation of which has become insufferable."

Harper's Weekly, April 16, 1898.

Monday, July 18, 1898.

Letter from President McKinley to Secretary Alger:

"We come not to make war upon the inhabitants of Cuba, nor upon any party or faction among them, but to protect them in their homes,

in their employments, and in their personal and religious rights.

* * * * * *

All ports and places in Cuba which may be in the actual possession of our land and naval forces will be opened to the commerce of all neutral nations, as well as our own, in articles not contraband of war, upon payment of the prescribed rates of duty which may be in force at the time of importation."

II.

Adhesion to Declaration of Paris.

Message of the President of the United States; Third Session, Fifty-fifth Congress, December, 1898:

(P. 7.) "In further fulfillment of international duty I issued April 26th, 1898, a proclamation announcing the treatment proposed to be accorded to vessels and their cargoes as to blockade, contraband, the exercise of the right of search, and the immunity of neutral flags and neutral goods under enemy's flag. A similar proclamation was made by the Spanish Government. In the conduct of hostilities, the rules of the Declaration of Paris, including abstention from resort to privateering, have accordingly been observed by both belligerents although neither was a party to that declaration."

III.

Possession of Guantanamo Bay.

Message of the President of the United States, Third Session, Fifty-fifth Congress, December, 1898:

P. 12. "On June 10th, under a heavy protecting fire, a landing of 600 marines from the *Oregon*, *Marblehead* and *Yankee* was effected in Guantanamo Bay, where it had been determined to establish a naval station.

"This important and essential port was taken from the enemy after severe fighting by the marines, who were the first organized force of the United States to land in Cuba.

Annual Report, Secretary of the Navy for 1898.

P. 12. "On June 7, the *Marblehead* and *Yankee* took possession of the lower bay of Guantanamo as a harbor of refuge for the fleet, and on June 10, the first battalion of marines was landed there and went into camp. For three days and nights these men, supported by the *Marblehead* and *Dolphin*, fought almost constantly. The position which they defended was a most important one for the fleet, as it was necessary to have near at hand a harbor in which ships could be coaled and repaired in safety."

Report of Colonel Commandant of U. S. Marine Corps (1898, p. 8).

"The *Panther* sailed from Key West for Cuba on June 7, 1898, and arrived at Santiago de Cuba on the morning of the 10th. On the same day, at 1

P. M., the ship arrived at Guantanamo Bay, Cuba, and at 2 P. M. of that day the battalion landed, with stores, and prepared to go into camp. On the 11th the camp was attacked by a much superior force of Spaniards, and from that time until the 14th the battalion was constantly under fire, and repulsed the enemy on every attack. The holding of the position at Guantanamo Bay was of the utmost importance to the navy, as it was the only harbor where the vessels could seek shelter during the hurricane season. Owing to the dense undergrowth, affording safe shelter to the Spanish sharpshooters, it would have been impossible for the vessels, by shelling the shore, to keep the enemy from harassing those on board the ships with their Mauser rifles to such an extent as to make it dangerous for them to remain there. The report of Colonel Huntington, from the organization of the battalion until its return from Cuba, is appended, and it is respectfully requested that it may be printed as a part of this report. Also appended is a report of Captain Geo. F. Elliott, of the battalion, who was sent out on June 14 with a detachment of two companies of the battalion, and fifty Cubans, for the purpose of destroying a well at Cuzco, about six miles from the camp, which was the only water supply of the enemy within twelve miles. This small force attacked and defeated a body of about 500 Spaniards and accomplished the destruction of the well."

Ibid., p. 30. From report of Commander McCalla :

To Admiral Sampson :

"I have the honor to inform you that on the 14th inst., at the suggestion of Col. Laborde, the Cubans under the command of himself and Lieutenant-Col. Thomas, supported by two companies of marines, under the command of Captain Spicer

and Lieutenant Elliott, routed the force of about three hundred Spaniards stationed in the pass between the marine camp and the south coast. * * * "

"The object of the movement was for the purpose of relieving the pressure on the marine camp by an offensive movement, and it was, I believe, entirely successful."

A somewhat more detailed account will be found in Morris' "War with Spain" (pp. 218, 219, 224).

"The Fall of Santiago."

BY THOMAS J. VIVIAN.

P. 71. "The infliction of these two blows" (the capture of the Spanish signal station, blockhouse, and water supply, by Captain George F. Elliott, on June 14th, and the destruction by the fleet of the fort and earthworks at Caimanera on June 16) "taught the Spaniards their lesson, and from that time on, the outer bay of Guantanamo and the hills overlooking Fisherman's point were as placid and untroubled as a summer resort. A varying number of colliers lay at anchor within Fisherman's point, the *Panther* was anchored close beside the camp, the *Solace* rode in the smooth sheltered waters of the bay, the *Marblehead* as flagship of the station steamed here and there, the cable office was re-established and officially known as Pleya del Este, vessels from the blockading squadron came and went, rowboats and launches moved rapidly about, no Spaniard was to be seen, and that which was the theatre of a seven days' continuous performance of unrest, distress and bloodshed, became so peaceful that the captured Spaniard's letter dolefully describing the American occupation of Guantanamo Bay as the matter-of-fact conversion of the place into a harbor of rest exactly fitted the transformation."

IV.

THE REFUGEES FROM SANTIAGO, THEIR SUFFERINGS, AND THE DIFFICULTY EXPERIENCED BY OUR ARMY IN GIVING THEM FOOD.

Morris "The War with Spain" (pp. 286, 287).

"On July 3, at 8:30 A. M., General Shafter sent a flag of truce to the Spanish lines with a letter, in which he threatened to shell Santiago unless surrender was made, and gave until ten o'clock of the next morning for the removal of the women and children and the citizens of foreign countries. This was no empty threat, for the positions gained during the battle of the 1st and 2d had given his batteries command of the city, which lay under his guns. General Jose Toral, who had succeeded to the command of the Spanish forces on account of the serious wounding of General Linares, replied that he would not surrender, but would inform the consuls and people of the permission to remove. At the request of the foreign consuls, the bombardment was deferred until noon of the 5th, it being stated that fifteen thousand or more people, many of them old, would probably leave the city.

"The offer to escape was gladly taken advantage of by the people of Santiago, particularly by those of foreign birth, and during the next day there was a pitiful scene as the fugitives swarmed in hosts out of the city and trudged wearily over the road to El Caney, San Luis, and other towns in the vicinity. All day long the hegira continued, the fugitives struggling painfully onward under the blazing sun, and over a road in many places ankle-deep in mud. Tottering old men and women supported by their children, mothers carrying their infants, rich and poor, white and black, cultured

and ignorant, all fled in terror from the horrors of an expected bombardment that was never to come.

"Most of them made their way to El Caney, in which town, with accommodations for not more than five hundred people, over five thousand slept that night, crowded into the deserted houses and camping out on the verandas and in the rain-soaked streets. At dawn of the next day hundreds who had been overtaken on the road by the darkness began to come in, and the flood continued until a multitude of fugitives, estimated at fifteen thousand, overflowed the little town. They had not been permitted to bring food, and there was none in the town, so that those with money were as destitute as those without. Pathetic sights were to be seen on all sides. Ladies of good birth, supported by frail girls, came feebly into the town, seeking to hide their faces from the vulgar gaze of the ignorant and coarse who surged about them. Despair filled all countenances, hunger threatened the miserable multitude with death, the scene being a reproduction on a minor scale of the results of General Weyler's brutal reconcentration order.

"General Shafter was appealed to for the support of the miserable throng. This he was not well able to afford, but promised to give them a limited daily supply of food, the necessities of the troops and the difficulty of getting supplies to the front standing greatly in the way of his feeding this starving multitude. In this dilemma, Clara Barton and the Red Cross officials did noble work, making the most earnest efforts to feed the starving. But it was a difficult task, the tides and the surf standing greatly in the way of landing supplies, while transportation was very difficult to obtain, and the roads between the landing place and the front were almost impassable."

P. 292. "The impossibility of supplying the

many thousands of refugees at El Caney with army rations soon started a new movement towards the army base at Siboney, and within a day or two thousands of these miserables were plodding along the muddy road in the trail of the wounded, women and children, dragging wearily on, staggering and slipping under the burdens they bore, and ready to endure any privations to escape from the horrors of a bombarded city."

P. 296. "Bad as conditions were in the American camp, they were still worse in that of the refugees, for whom it had become next to impossible to provide food, and most of them were exposed without shelter to the drenching floods."

REPORT SECRETARY OF WAR, VOL. I, PART II, p. 566.

Gen. Breckenridge's Report—Inspector-General, U. S. A.

"Permission was given for the non-combatants to leave the city. They did leave in the following days to the number of perhaps twenty thousand, filling the neighboring villages and roads with destitute people, mostly women and children. It then seemed to fall to our lot to see that these people did not starve in a desolate country, and to be as much our duty to take care of these people whom our policy had driven from their homes, as it was for Spain to feed the reconcentrados whom they drove from their homes under their war policy. The task was not insignificant."

OFFICE NAVAL INTELLIGENCE WAR NOTES, No. 1.

BATTLES AND CAPITULATION OF SANTIAGO DE CUBA, BY LIEUTENANT JOSE MULLER Y TEJEIRO.

(P. 33.)

"I do not know what news may have reached

the Peninsula about the conditions at Santiago de Cuba. It is possible that the people believe there that only certain articles of food were lacking; if that is the case, they are greatly mistaken. People here have suffered from actual hunger, and many persons have starved to death, although the population has been greatly decreased, since whole families had left prior to the 21st day of April. I, myself, saw a man who had died of hunger in the entrance of the Brooks House opposite the captaincy of the port—died because he had nothing to eat."

(P. 146).

"Many of those who emigrated were people of wealth, women not accustomed to such fatigues and hardships, which fear and terror alone enabled them to bear.

"Being convinced, though I do not know why they should have been, that their absence would not be for the more than sixty or seventy hours at most, the majority of them had nothing with them but the clothes on their backs and a little underclothing, and no provisions except what they could carry themselves;

"I have been told, not by one person alone, but by many who were there and with whom I have talked, that there were no less than eighty people in any one house, and in some of them as many as two hundred. As in the cemetery, each person had no more space than he or she occupied; and thus they were housed together, men and women, children and old people, white persons and black.

"The provisions which were calculated for three days at most were naturally soon exhausted, and this is probably the only instance in the nineteenth century when money was looked upon with disdain and when gold was of no value. Trading was going on, it is true, but it was exchanging rice for coffee, hardtack for beans, or sugar for codfish.

"The bodies of those who had been killed on the 1st of July had only partly been buried, and the houses in that portion of the town which had been shelled were riddled with bullets, and, therefore, leaking everywhere. Carcasses of horses and other animals, even corpses of persons, were thrown into

the river, and people washed their dirty clothes and bathed in the water, which was all there was to drink. Most of the people lived on mangoes and mamoncillos, and it is no wonder that malaria, fevers, and dysentery broke out and assumed alarming proportions.

"The houses had no sanitary provisions of any kind, and as the doors were kept closed in order to prevent new invasions, the atmosphere was terrible. The children, sick from lack of nourishment or from taking food which they could not digest, were crying day and night, and quiet or rest became impossible.

"The faces of those who died were covered with a sheet or handkerchief, and the living remained by the side of the dead bodies, knowing that, if they should leave their places, others would come to occupy them.

"Why go on? I might write a hundred chapters and still not give an idea of the suffering during those days; suffice it to say, that El Caney, which was a town of 200 houses, was invaded by 20,000 people, who had counted on being there two days and who remained eleven, namely, until the 16th.

"Those eleven days at El Caney have caused more victims in Santiago than the three years of war; for the epidemic that broke out still (August 10, 1898), continues. When the inhabitants of the city numbered 45,000, there were, on an average, not over five deaths a day; and now, that the number of inhabitants is reduced to 30,000, there are not less than fifty a day. The house that does not contain one or more sick is an exception, and people who are well and hearty one day are buried a day or two later. The physicians cannot attend all the sick, and the dead are carried to the cemeteries by members of their own families. The city wears that stamp of sadness and absence of life which is the mark of great calamities, and we hear nothing but wailing and sobbing."

THE SANTIAGO CAMPAIGN, BY GEN. JOSEPH P. WHEELER.

P. 245.

HEADQUARTERS CAVALRY DIVISION,
IN FRONT OF SEVILLA, ON SANTIAGO ROAD,
June 25th, 1898.

To Gen. Shafter:

"I have just seen two negro boys who left Santiago this morning (Saturday). They report that the soldiers and citizens are very short of food. The soldiers and officers have seized all the food in the shops. They are killing young horses for food, and in the hospitals are subsisting on bread made of rice flour."

WHEELER.

P. 255.

HEADQUARTERS 5TH ARMY CORPS,
June 27th, 1898.

My dear Gen. Wheeler:

* * * "I hope your scheme of sending spies into Santiago has worked. I also understand that a large number of poor people came out yesterday and are within the lines. Of course they will be received, as we can't drive starving people back."
* * *

"I am shipping out stores as fast as possible; ammunition, forage and rations."

W. R. SHAFTER.

(P. 111.)

July 3d, 1898, 8:30 A. M.

Gen. Shafter writes to the Spanish Commander at Santiago:

"I shall be obliged, unless you surrender, to shell Santiago de Cuba. Please inform citizens of foreign countries and all women and children that

they should leave the city before 10 o'clock to-morrow morning."

REPORT SECRETARY OF WAR, VOL. I, PART I.

Official correspondence relating to surrender.

P. 105:

Gen. Shafter to the Spanish commander, July 3d, 1898:

"In consideration of the request of the consular officers in your city and in the interest of the poor women and children who will suffer very greatly by their hasty and enforced departure from the city, I have the honor to announce that I will delay such action (bombardment) solely in their interest, until noon on the 5th."

P. 114:

Gen. Shafter to Secretary of War, July 9, 1898:

"I forwarded General Toral's proposition to evacuate the town this morning" (a proposition to march out with arms and baggage, and not be molested before reaching Holguin). "Since then I have seen the general officers commanding divisions who agree with me that it should be accepted.

"I.—It releases at once the harbor.

"II.—It permits the return of thousands of women, children and old men who have left the town fearing bombardment, and are now suffering where they are, though I am doing my best to supply them with food.

"III.—It saves the great destruction of property

which a bombardment would entail, most of which belongs to Cuban and foreign residents.

IV.—It at once relieves the command while it is in good health, or operations elsewhere."

P. 116:

General Shafter to General Corbin, July 12:

"Great deal of suffering among the people of Santiago. Am doing my best to relieve it but not entirely successful."

P. 117:

Gen. Shafter to Gen. Corbin, July 12:

"Will any modification of the recent order be permitted? And as I have been perfectly satisfied that he (Toral) can be taken, but if he fights, as we have reason to believe he may, it will be at fearful cost of life, and to stay here with disease threatened may be as great loss from the cause. The suffering of the people who left the town is intense. I can only supply food enough to keep them from starving, and if blue rains continue I do not know how long I can do that."

P. 118:

Gen. Miles to Gen. Alger:

"The Spanish general to-day * * offers to surrender Santiago province, force, batteries, munitions of war, etc., all except the men and small arms. Under ordinary circumstances would not advise acceptance, but this is a great concession and would avoid assaulting intrenched lines with every device for protecting his men and inflicting heavy loss on assaulting lines. The siege may last many weeks. They have provision for two months. There are 20,000 starving people who have fled the city and were not allowed to take any food." * * *

THE SANTIAGO CAMPAIGN, BY GEN. WHEELER.

July 3d, 1898 Gen. Shafter telegraphed the Secretary of War at Washington (p. 114):

"Situation has become precarious on account of difficulties of supplying the command with food, and the tremendous fighting qualities shown by the enemy from his almost impregnable position."

And again (p. 115):

"General Pando has arrived at Palma, and the French Consul, with about 400 French citizens, came into his (Gen. Garcia's) lines yesterday from Santiago. Have directed him to treat them with every courtesy possible."

P. 313.

On the sixth Gen Wheeler writes Gen. Shafter:

"We are short of rations. Please hurry them up, and also please send us some stationery."

The General-in-Chief (Linares) telegraphed from Santiago to the Secretary of War (Madrid), July 12, 1898 (pp. 132, 133): * * *

"Cattle without fodder or hay. Fearful storm of rain, which has been pouring continuously for the last twenty hours. Soldiers without permanent shelter, their only food consisting of rice. * * * All the people have fled, natives as well as Spaniards, even those holding public offices, with few exceptions. Only the priests remain, and they wish to leave the city to-day, headed by their archbishop. These defenders do not start now a campaign full of enthusiasm and energy, but for three years they have been fighting the climate, privations and fatigues, and they have to confront now this critical situation, when they have no enthusiasm or physical strength. They have no ideals, because they defend the property of people who have de-

serted them, and of those who are the allies of the American forces."

July 14, 1898, Gen. Miles writes Gen. Shafter (p. 337:

"You are authorized to appoint Commissioners to draw up Articles of Capitulation. * * The attention of the Commissioners should be called to the importance of the return of the people that have fled from the city of Santiago, and the supplying them with food."

In the discussion as to the capitulation of the Spanish forces in Santiago the following statements appear (p. 155):

Paragraph 3 as amended:

"That the chief of the Spanish forces immediately after the confirmation of this agreement make arrangements for the entrance into the harbor of Santiago of the Red Cross ship *State of Texas*, a vessel sailing under the terms of the Geneva Convention, for the purpose of furnishing provisions to those starving in Santiago, without reference to nationality."

It appears that foreign ships had previously visited Santiago to take away refugees.

General Toral (p. 170) * * "said that even the foreign ships which came to take off their subjects had had to stop outside the port it not being possible for them to enter the harbor on account of the submarine defenses."

General Wheeler writes (p. 169):

"Lieutenant Miley said Gen. Shafter had had an examination made of the bridge of Aguadores and had found it would take at least a week to get the railroad in proper repair. It was his desire and purpose to feed the needy people in Santiago who

would be coming in in large numbers from the surrounding country, and he therefore desired that steps be taken, not after the signing of the capitulation, but immediately, to permit the Red Cross ship *State of Texas* to enter the harbor of Santiago."

Gen. Wheeler states (p. 169) that Gen. Toral replied that "he was, however, quite willing for the vessel to come quite close up to the harbor mouth, and for the stores to be placed on lighters, which being of a light draft could pass over the mines without danger."

Gen. Wheeler writes, P. 184:

"Some further idea of the desolation of the country may be formed from the fact that during the whole of our march from Siboney on the coast to the outskirts of the city of Santiago not one single house was standing, nor one acre under cultivation."

Gen. Wheeler continues (P. 191):

"El Caney is a very ordinary town of some three or four hundred people. * * * When the commanding general of Santiago notified the residents that the place would be bombarded, twenty-two thousand people left the city, eighteen thousand of them congregating in this town and vicinity, while the others scattered around in neighboring fields. Their sufferings were fearful. Notwithstanding the great efforts on the part of the Government and the Red Cross to feed them, there was so little organization that many of them were traveling to and fro to various places in the hope of bettering themselves, and many suffered seriously from want of food. It was a pitiful sight to see men, women and children * * * tramping through the mud and begging for something to eat."

Even as late as July 24th, 1898, Major Garlington, the Inspector-General of the Cavalry Division, reports (pp. 359, 360):

"The officers and men are in urgent need of almost everything except arms and ammunition. I have verbally already reported the condition of the enlisted men as to clothing, and I understand requisitions are being prepared * * they have no reserve supply on the transports and have only what they have on their backs. * * Yesterday some fresh beef was issued to the division, the first since leaving Tampa on the 13th of June. A more varied diet is urgently needed, beans and rice owing to limited transportation having not been regularly issued, and since leaving the transports the command has been living on hard-tack, bacon, sugar and coffee. It has been and is now extremely difficult to get any officers' stores. * * * On the 23d there were 201 cases in hospital. There was no tentage except shelter tents; no cooking utensils except two camp kettlesand the meat ration can; no food except straight rations. * * *

"The question of transportation is a very serious one, and if the number of pack mules assigned to this Division cannot be increased from those now on the island * * * at least 250 mules, with proper number of civilian packers, should be shipped from the U. S. at once. As the matter now stands only one day's supplies can be furnished, without taking into consideration any change of camp, stores or anything that would interrupt the ration supply."

"The Red Cross,"
Clara Barton.

P. 577.

"The city (Santiago) was literally without food. In order to clear it for defense, its inhabitants had

been ordered out, ten days before, to El Caney, a small town of five hundred people, where it was said thirty thousand persons were gathered, without food, shelter or place of rest. Among these were the old-time residents, the wealthy and the best people of Santiago. Its British consul, Mr. Ramsden, and his family, were of them, and the care and hardships of that terrible camp cost his life. A message from the headquarters of General Shafter, telegraphed to us even after leaving Siboney, said: "The death rate at El Caney is terrible. Can you send food?"

"Word went back to send the thirty thousand refugees of El Caney at once back to Santiago. We were there and could feed them, that the *State of Texas* had still on board twelve hundred tons of supplies for the reconcentrados. That day poured upon us all that had strength to make the journey, of the thirty thousand starving wrecks of El Caney. If there were any at night who had not received food, we did not know it."

P. 579.

"The discharge of the *State of Texas* of over 12,000 tons commenced at 6 P. M. Monday, July 18. 125 stevedores were employed and paid in food issued as rations. On July 22d the ship left for New York.

"During that time the people had returned to Santiago, numbering 30,000, and all were fed—ten thousand a day, from the soup kitchen of Mr. Michaelson, the others with bread, meat, and milk. * * * All transient persons are fed at the kitchen, the food being provided by the Red Cross."

THE "ROUGH RIDERS," BY THEODORE ROOSEVELT (pp. 196, 197).

"On the morning of the 3d the Spaniards had

sent out of Santiago many thousands of women, children, and other non-combatants, most of them belonging to the poorer classes, but among them not a few of the best families. These wretched creatures took very little with them. They came through our lines and for the most part went to El Caney in our rear, where we had to feed them and protect them from the Cubans. As we had barely enough food for our own men the rations of the refugees were scanty indeed and their sufferings great. *Long before the surrender they had begun to come to our lines to ask for provisions and my men gave them a good deal out of their own scanty stores, until I had positively to forbid it and to insist that the refugees should go to headquarters; as, however hard and merciless it seemed, I was in duly bound to keep my own regiment at the highest pitch of fighting efficiency.*

"As soon as the surrender was assured the refugees came streaming back in an endless squalid procession down the Caney road to Santiago. My troopers, for all their roughness and their ferocity in fight, were rather tender-hearted than otherwise, and they helped the poor creatures, especially the women and children, in every way, giving them food and even carrying the children and the burdens borne by the women."

"The Cuban and Porto Rico Campaigns."
Richard Harding Davis.

P. 172.

"For six days (after June 24) the army was encamped on either side the trail * * the pack-trains passed up and down between them, carrying the day's rations. The trail was a sunken wagon road, where it was possible, in a few places, for two wagons to pass at a time, but the greater dis-

tances were so narrow that there was just room for a wagon or a loaded mule-train to make its way. The banks of one trail were three or four feet high, and when it rained it was converted into a huge gutter, with sides of mud, and with liquid mud a foot deep between them."

"THE FIGHT FOR SANTIAGO."

BY STEPHEN BONSAL.

Pp. 352, 353:

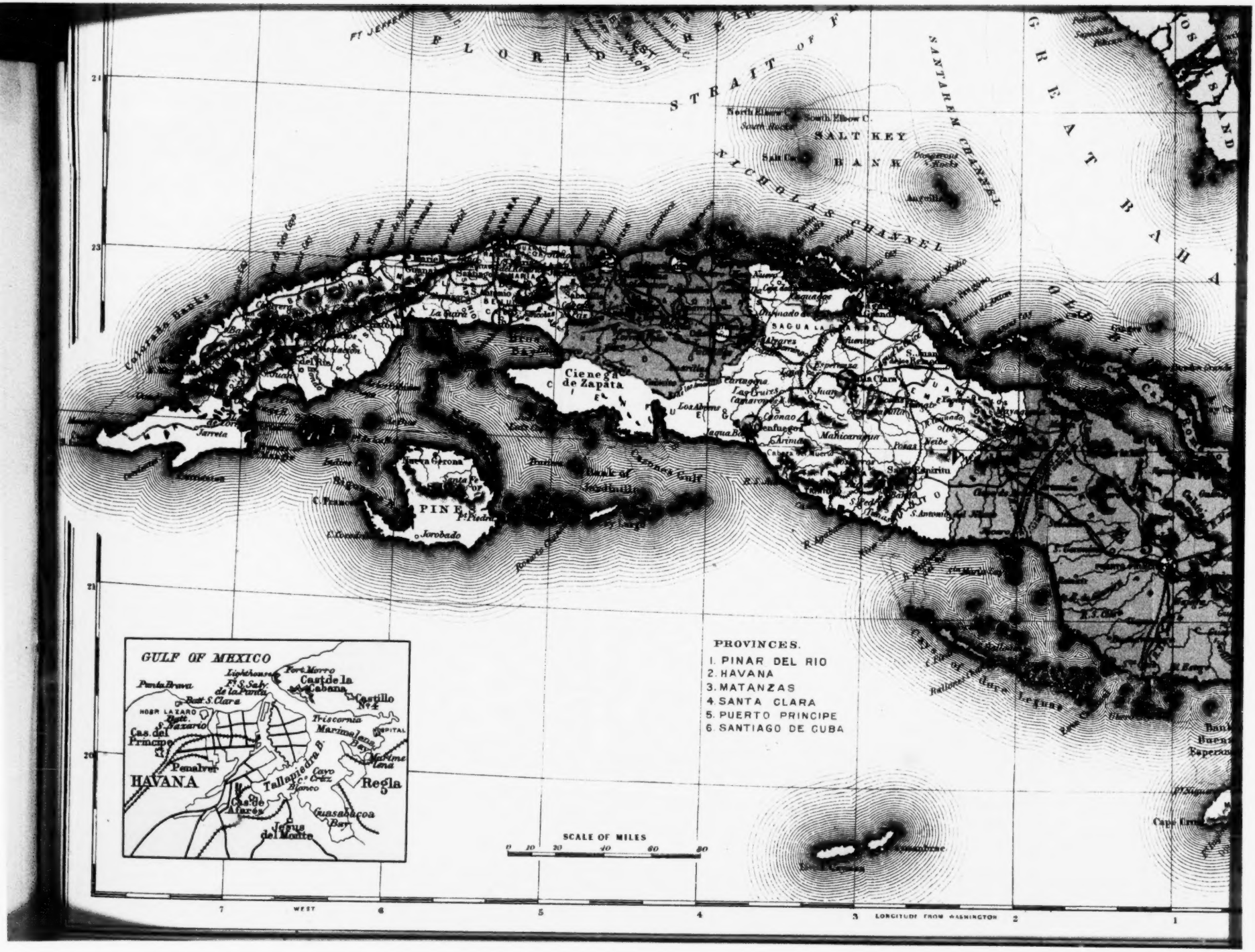
"There were two hundred houses in Caney, more than half of them being simply straw-thatched bohios. They were one and all crowded before the great exodus of to-day began. Upon this village more than twenty thousand people now directed their steps, and, of course, there was nothing to eat in Caney for man or beast except the rations which could be spared by the army. For several days rations were served out under th· direction of Captain Stewart Brice, of the headquarters staff, and of Captain Allen, of the Second Cavalry, to the number of two thousand per day, but after the terrible rains of the 10th and the 11th we were not able to bring up so many. The great majority of the refugees were reduced to living upon mangoes and mamoncillas, and to sleeping in the woods under the shelter of the trees, and soon, of course, fevers of all kinds and dysentery broke out and began to assume alarming proportions."

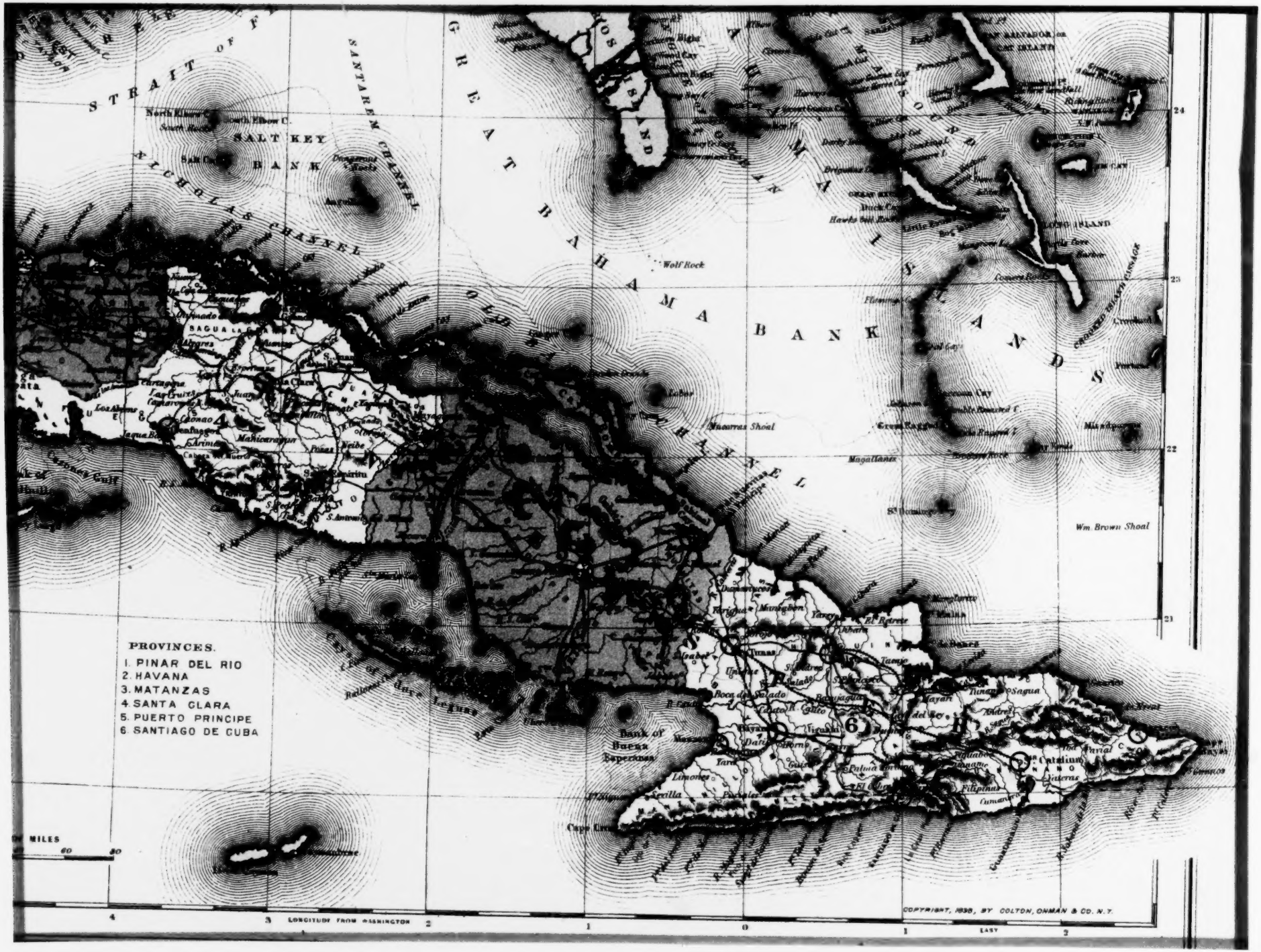
"Rode to Caney at six o'clock in the morning. Met strange line of refugees on road—some on foot, some in Cuban carts, some half-clothed, some not clothed at all, with their household pets, dogs and parrots. Some women wore diamond rings on their fingers, while their delicate shoes were torn off by the rough stone of the road they had come. Many lay exhausted on the ground, unable to move."

P. 354:

"I saw refined, handsome women who had never

walked or gone out except in a carriage, after the Cuban custom, now compelled to walk two leagues in the hot sun, many of them with the paper soles torn away from their shoes and with bleeding feet, and not a few of them with little babies not more than ten or fifteen days' old in arms. There was a very refined American lady among them, the widow of a Cuban doctor. She had come out of the city with her daughter, a delicate girl, and now regretted having done so. Another time, she said, she would remain at home and take her chances of the bombardment. Among them was also the United States consular agent from Baracoa. He said that he had had to observe very diplomatic behavior during the siege. There was also a Brooklyn girl, who was looking along the road for her brother, who, she said, had volunteered to fight to free Cuba."


FLORIDA
STRAIT OF
SALT KEY BANK
SANTAREM CHANNEL
GREAT BAHAMA
NICHOLAS CHANNEL
Cienega de Zapata
PINE
Jovabado
Tarreta
Colorado Banks
Jardinilla
Cayo Romano
Cayo Fragoso
Cayo Coco
Cayo Sabinal
Cayo Guajaba
Cayo Paredon Grande
Cayo Cruz del Padre
Cayo Bretal
Cayo Largo
Isla de Juventud
Cape Corrientes
Cape Frances Viejo
Cape Cruz
Cape Maisi
Guantanamo
Baracoa
Bahia Honda
Mariel
Matanzas
Cardenas
Sagua la Grande
Caibarien
Remedios
Sancti Spiritu
Ciego de Avila
Morón
Nuevitas
Gibara
Holguin
Manzanillo
Bayamo
Santiago de Cuba
Guantanamo
Trinidad
Cienfuegos
Batabano
Colon
Sagua la Grande
Esperanza
Santa Clara
Caibarien
Remedios
Sancti Spiritu
Ciego de Avila
Morón
Nuevitas
Gibara
Holguin
Manzanillo
Bayamo
Santiago de Cuba
Guantanamo
Baracoa
Trinidad
Cienfuegos
Batabano
Colon
Matanzas
Cardenas
Mariel
Bahia Honda
Guane
Pinar del Rio
Consolacion del Sur
Candelaria
San Cristobal
Los Palacios
Guira de Melena
Alquizar
Artemisa
Guanajay
Bejucal
Güines
Jaruco
Santa Cruz del Norte
Matanzas
Cardenas
Colon
Jovellanos
Limonar
Union de Reyes
Aguada de Pasajeros
Rodas
Palmira
Cienfuegos
Cruces
Lajas
Santa Isabel de las Lajas
Rancho Veloz
Camajuani
Placetas
Santa Clara
Caibarien
Remedios
Sancti Spiritu
Jatibonico
Ciego de Avila
Morón
Chambas
Bolivia
Nuevitas
Las Tunas
Jobabo
Manati
Gibara
Holguin
Mayari
Sagua de Tanamo
Guantanamo
Baracoa
Maisi
Cape Maisi
Cape Cruz
Manzanillo
Bayamo
Yara
Santiago de Cuba
Caney
Jiguani
Palma Soriano
Contramaestre
Songo
Dos Rios
Victoria de las Tunas
Puerto Principe
Nuevitas


PROVINCES.
1. PINAR DEL RIO
2. HAVANA
3. MATANZAS
4. SANTA CLARA
5. PUERTO PRINCIPE
6. SANTIAGO DE CUBA
STRAIT OF FLORIDA
GREAT BAHAMA BANK
SALT KEY BANK
NICHOLAS CHANNEL
SANTAREM CHANNEL
CROOKED ISLAND PASSAGE
Wolf Rock
Wm. Brown Shoal
Bank of Buena Esperanza
Cape Cruz
Caicaimo
Filipinas
Limones
Sevilla
Pocoles
Manzanillo
Bayamo
Holguin
Nuevitas
Sagua
Remedios
Cienfuegos
Trinidad
Matanzas
Havana
Mariel
Pinar del Rio
Batabano
Isle of Pines
Cayman Islands
Caicos Islands
Turks Islands
Mayaguana
Inagua
Crooked Island
Long Island
Acklins Island
Rum Cay
San Salvador
Watling Island
Great Inagua
Mira Por Vos
Hogsty Reef
Silver Cay
Navassa Shoal
Magallanes
Caicos Passage
Old Bahama Channel
Yucatan Channel
Florida Straits
Gulf of Mexico
Caribbean Sea
Atlantic Ocean
MILES
60
80
LONGITUDE FROM WASHINGTON
EAST
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